Public Utilities FORTNIGHTLY

February 19, 1931

PUBLIC UTILITIES REPORTS, INC.
PUBLISHERS

ALDRED & CO.

40 WALL STREET

NEW YORK CITY

HENRY C. SPURR, *Editor*
KENDALL BANNING, *Editorial Director*
ELLSWORTH NICHOLS, *Associate Editor*
FRANCIS X. WELCH, *Contributing Editor*
M. M. STOUT, *Assistant Editor*

Public Utilities Fortnightly

VOLUME VII — *February 19, 1931* — NUMBER 4

Contents of previous issues of PUBLIC UTILITIES FORTNIGHTLY *can be found by consulting the "Industrial Arts Index" in your library.*

PUBLIC UTILITIES REPORTS, INC., PUBLISHERS

PUBLIC UTILITIES FORTNIGHTLY, a magazine dealing with the problems of utility regulation and allied topics, including the decisions of the state commissions and courts, now issued in conjunction with Public Utilities Reports, Annotated; endorsed by the National Associations of the Utility Industry and by the National Association of Railroad and Utilities Commissioners, and supported in part by those conducting public utility service, manufacturers, bankers, accountants and other users of the publication.

PUBLIC UTILITIES FORTNIGHTLY, published every other Thursday, 75 cents a copy; $15.00 a year.

PUBLIC UTILITIES REPORTS, ANNOTATED, 5 bound volumes with Annual Digest, $32.50 a year.

PUBLIC UTILITIES REPORTS, ANNOTATED, WITH PUBLIC UTILITIES FORTNIGHTLY, combined price $42.50 a year. Publication office, 615 Duffy-Powers Building, Rochester, N. Y.; editorial and executive offices, Munsey Building, Washington, D. C. Entered as second-class matter April 29, 1915, at the Post Office at Rochester, N. Y., under the Act of March 3, 1879. Printed in U. S. A.

Pages with the Editors

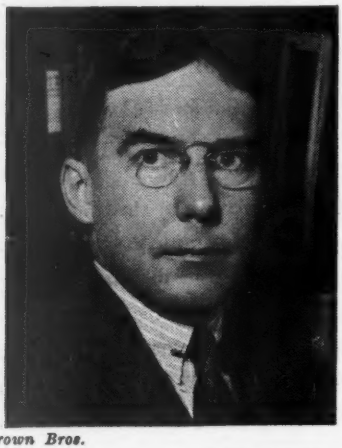
THIS number of PUBLIC UTILITIES FORTNIGHTLY presents, in its two leading articles, opposing points of view toward one of the most timely and controversial of the problems that now confront our legislators, the regulatory bodies and the public utility leaders—the regulation of holding companies.

* *

HERE is a situation that is engaging public attention more and more, not only because it involves some important questions in economics, law and finance, but also because it is being injected into political argument and, in some localities at least, has already become a part of the controversy that is raging over what is becoming popularly known as "the power question."

* *

THE two viewpoints are ably set forth on the following pages by men who are pre-eminent in their fields and whose opinions carry weight—DR. JAMES C. BONBRIGHT, the economist of New York, and MR. MARTIN J. INSULL, the public utility leader of Chicago.



Brown Bros.

DR. JAMES C. BONBRIGHT

" . . . the presence of great holding companies, free from control by commissions, has done much to impair the success of the regulatory machinery."

(SEE PAGE 195)

DR. BONBRIGHT, one of the younger of that group of liberals whose criticisms of the present machinery provided for the regulation of public utilities has brought him into national prominence, is professor of finance in the School of Business at Columbia University, New York.

* *

BORN in Evanston, Illinois, in 1891 DR. BONBRIGHT graduated from Northwestern University in 1913, and received his Ph. D. degree from Columbia in 1920.

* *

HE was a member of the recent New York State Commission on the Revision of the Public Service Commission Law; his dissenting opinions, as ably set forth in the minority report, attracted wide-spread notice and did much to focus the lime-light on him as an influential figure to be reckoned with in the consideration of changes in our regulatory procedure—particularly in view of his close and sympathetic affiliation with GOVERNOR FRANKLIN D. ROOSEVELT.

* *

DR. BONBRIGHT is, furthermore, a consultant of the Interstate and Foreign Commerce Committee of the House of Representatives in its pending investigation of railway holding companies, and is the author of the book "Railroad Capitalization," as well as of numerous magazine articles on public utilities and corporation finance.

* *

MR. MARTIN J. INSULL, who takes issue with DR. BONBRIGHT on pages 204 to 210 of this number, is one of the most widely known and most successful of the public utility leaders in the country.

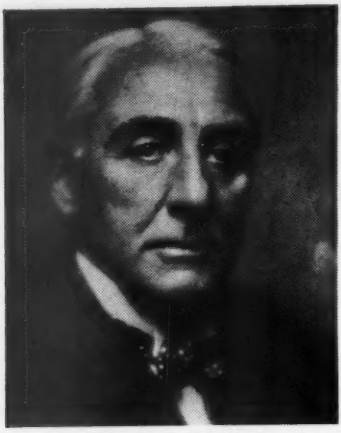
* *

BORN in England in 1869, MR. INSULL graduated with the degree of M. E. from Cornell University in 1893, and immediately entered upon his business career, first in the electrical industry and later in the utility industry.

* *

AT the present time MR. INSULL is president of the Middle West Utilities Company (since 1924), in which capacity he is perhaps most widely known throughout the country; incidentally, however, he is president or vice-president of a dozen other important utility corporations, and from 1921 to 1922 served as president of the National Electric Light Association.

(*Continued on page VIII*)



MARTIN J. INSULL

" . . . effective regulation of the operating company is all that is necessary to protect the public interest."

(See Page 204)

The editors of Public Utilities Fortnightly are pleased to welcome both of these gentlemen to its steadily growing ranks of distinguished authors who are selecting this magazine as the medium of debate.

* *

Another new-comer to our list of contributors is Mr. Harry T. Dobbins, whose article "Regulation by Intimidation of State Commissioners" appears on pages 224 to 230.

* *

Mr. Dobbins was born in Pennsylvania in 1865, and immediately upon completing school entered newspaper work, first as a journeyman printer and later as newspaper editor, in Nebraska.

* *

Mr. Dobbins has for a number of years been associate editor of the *Nebraska State Journal*, published at Lincoln; in addition to his editorial work he has specialized in reporting important legal controversies before the State Railway Commission and the Nebraska supreme court; as part of such work he has been present at many public utility hearings before the commission and has read practically all of its findings and orders for fourteen years.

* *

It is probable that there is no writer in Nebraska better qualified to describe the unusual, not to say extraordinary conditions with which the Nebraska regulatory body has had at times to contend in the performance of its duties.

Mr. Neil M. Clark (whose article on "When a Utility Merchandizes" is the third of a series on this important subject) is a magazine writer of Chicago, who has made a special survey for Public Utilities Fortnightly of the problems involved when a gas and electric utility company engages in the retailing of appliances.

* *

Mr. John T. Lambert, whose department "As Seen from the Side-lines" is a regular feature of this magazine, is a newspaperman of Boston; Mr. Henry C. Spurr is of the editorial staff of Public Utilities Fortnightly.

* *

What is wrong with the public relations policies of the utility companies?

* *

In a coming number of this magazine this pertinent question will be answered by Mr. Harry Reid—a public utility man who is not only the president of an important utility corporation, but also the chairman of the committee appointed by the National Electric Light Association for the study of this problem—a problem that is assuming greater and greater importance as the public interest in regulation grows and as the political attacks upon the state regulatory commissions increase as election time approaches.

* *

Mr. Reid has handled his subect frankly and pointedly, and has set forth criticisms and constructive suggestions that are illuminating and informative—particularly and specifically to those utility executives who are charged with the responsibilities of gauging the trend of public opinion and of shaping the policies of utility companies.

* *

"Permit me to renew my congratulations upon the sustained very high character of the material appearing in Public Utilities Fortnightly.

—Luther R. Nash,
Stone & Webster Service Corporation.

* *

The index for Volume VI of Public Utilities Fortnightly covering the thirteen numbers beginning with the July 10, 1930, issue and concluding with the issue of December 25, 1930, is now ready.

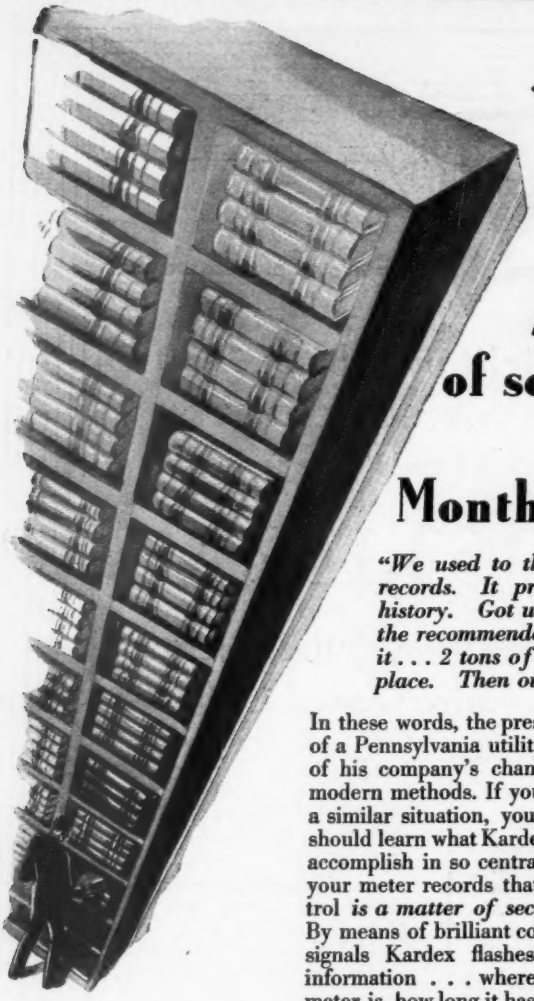
* *

Readers of this magazine who desire copies will receive them free of cost upon application to Public Utilities Fortnightly, Munsey Building, Washington, D. C.

* *

The next issue will be out March 5th.

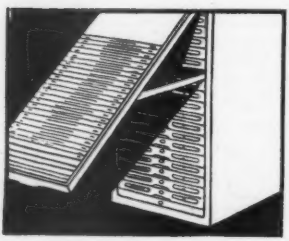
—The Editors.



"We shelved 2 TONS of so called histories... ...and the Monthly Mixup Ceased"

"We used to think we had a system for our meter records. It produced more headaches than meter history. Got us in a new mixup every month. On the recommendation of Remington Rand, we shelved it . . . 2 tons of it . . . and put Kardex Control in its place. Then our troubles ceased."

In these words, the president of a Pennsylvania utility tells of his company's change to modern methods. If you face a similar situation, you, too, should learn what Kardex can accomplish in so centralizing your meter records that control *is a matter of seconds.* By means of brilliant colored signals Kardex flashes this information . . . where any meter is, how long it has been there, where it has been before, its present condition and when it was tested last. You get all this *at a glance!*



More, Kardex gives periodic reports of all meters both in service and in stock. Those removed. Those disconnected. Those condemned. The Kardex Meter Record is complete, accurate, neat and permanent...every point in compliance with the Public Service Commission regulations.

Kardex makes the meter record talk, provides complete meter control, permits of stock taking and record making without disturbing the cards and cuts idle meter inventory to an economical level. The record is so designed that it will cover the life of the meter, and the complete cost for equipment and cards does not exceed 6 cents.

If you desire further proof of what Kardex Meter Records can do toward systematizing your business and cementing your public relations, call the nearest office of Remington Rand. No obligation involved.

Public Utility Division.

Remington Rand
BUSINESS SERVICE
BUFFALO, NEW YORK

Sales Offices Everywhere

FEBRUARY

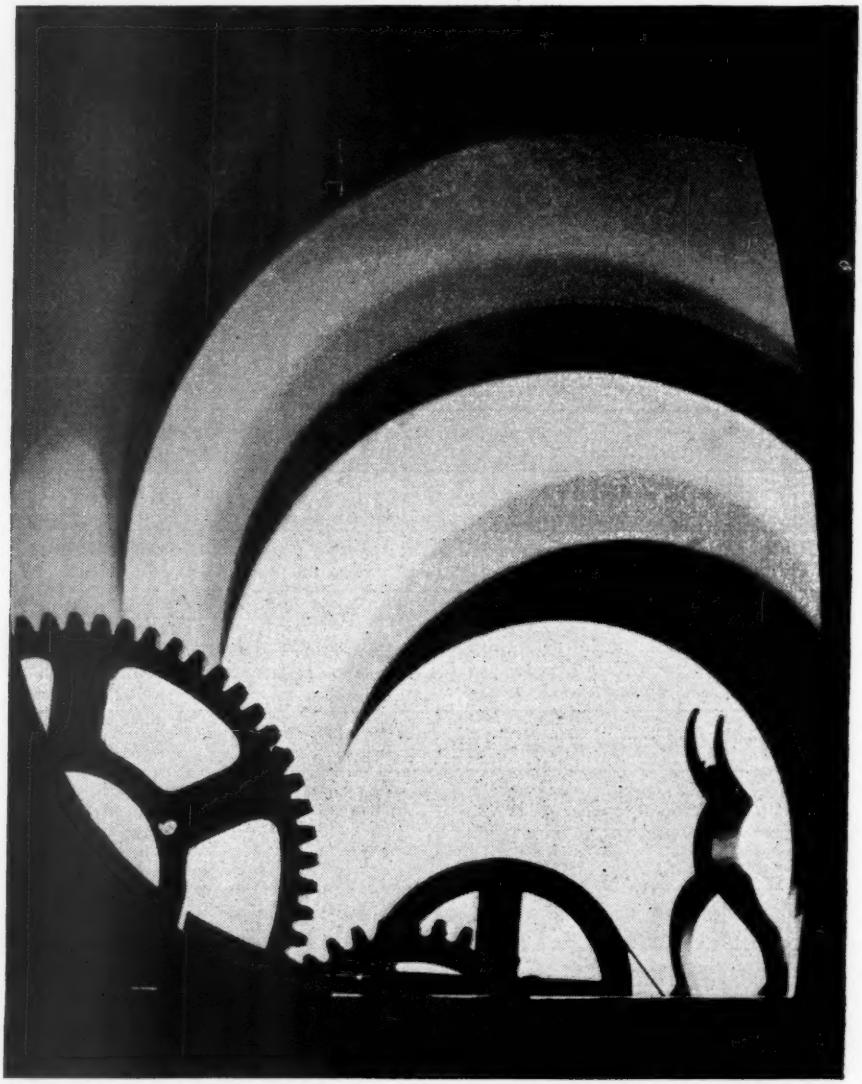
Reminders of Coming Events — **ALMANACK** — *Notable Events and Anniversaries*

19	T^h	The first gas company in the United States was founded in Baltimore, Maryland; 1816. NEWCOMB CARLTON, president of the Western Union, was born; 1869.
20	F	FREDERICK DE MOLEYNS obtained his first patent on an incandescent lamp; the burner was powdered charcoal operating in an exhausted glass globe; 1841.
21	S^a	SAMUEL F. B. MORSE first demonstrated his telegraph to the President of the U. S.; 1838. DAVID MELVILLE obtained a patent on an apparatus for making coal gas; 1813.
22	S	Ground was broken for the Central Pacific Railroad in Sacramento by GOVERNOR STANFORD; 1863. ¶ *Washington's birthday.*
23	M	A bill appropriating $30,000 to test the practical value of SAMUEL F. B. MORSE'S new telegraph apparatus was passed in the House by the vote of 90 to 82; 1843.
24	T^u	PRESTON S. ARKWRIGHT, president of the Georgia Power Company, was born; 1871. JAN BAPTIST VAN HELMONT, a Dutch chemist, discovered artificial gas; 1609.
25	W	Toasts were drunk to celebrate the breaking of ground near Murray Hill for the New York and Harlem Railroad; 1832.
26	T^h	The first complete electric street car system was established at Richmond, Va., with a total of forty motor cars; 1888.
27	F	DAVID SARNOFF, president of Radio Corporation of America, was born in Russia; 1896. H. E. HUNTINGTON, railroad man, was born; 1850.
28	S^a	The first American railroad running the distance of 15 miles from Baltimore to Ellicott's Mills, was chartered; the motive power was supplied by animals; 1827.

MARCH

1	S	The first photographs were transmitted by telephone wire from San Francisco to New York; 1925. Oregon Short Line Railroad was opened; 1883.
2	M	The first electric lights used in Wanamaker's store in Philadelphia were called "moons held captive in glass globes" by the newspapers; 1878.
3	T^u	SIR CHARLES WHEATSTONE invented the "self-excited" dynamo, now universally used; 1866. ALEXANDER G. BELL was born in Edinburgh, Scotland; 1847.
4	W	The Public Service Commission of Montana came into existence; 1913. The introduction of refrigeration by gas, opened a new outlet for utility service; 1915.

"All things must change,
"To something new, to something strange."
—LONGFELLOW



From a camera study by William M. Rittase

A Phantasy of Power

"Man is a tool-making animal."
—BENJAMIN FRANKLIN

Public Utilities
FORTNIGHTLY

VOL. VII; NO. 4 FEBRUARY 19, 1931

Should the Utility Holding Company Be Regulated?

THE CASE OF THE AFFIRMATIVE

THE author of this article is not only recognized as one of the foremost of American economists, but as one of the leaders of the liberal group whose criticism of the present system of regulation has been instrumental in bringing the public utilities into the realm of public discussion and thence into the political arena. In this article he points out the three fallacies which, in his opinion, have distorted the views of those who maintain that the utility holding companies should not properly come within the jurisdiction of the regulatory bodies.

BY JAMES C. BONBRIGHT
PROFESSOR OF FINANCE, SCHOOL OF BUSINESS, COLUMBIA UNIVERSITY

WE are living in an interesting, not to say exciting day, for all persons concerned with public utility problems. We are living in a day when the effectiveness of our entire American system of private ownership and operation is being seriously and severely challenged.

For the last ten years there has been a growing feeling on the part of impartial experts that something has been going wrong with our attempt to combine private ownership and operation with public regulation. Even as late as one year ago, however, that feeling had been confined to a relatively few close students of the problem and to the professional advocates of government ownership. The public itself was hardly aware that the problem even existed.

But within a period of less than twelve months a truly amazing change has taken place in the country

as a whole. The nationwide elections on November 4th have revealed a situation which not even the most severe critics of the public utility companies would have ventured to predict. They have revealed the fact that the control of our great utility enterprises, particularly of our power and light companies, has already become an outstanding political issue. They have revealed a dissatisfaction with regulation as it now exists, hardly less widespread than is the dissatisfaction with the policies of our national administration on prohibition, on the protective tariff, and on farm relief. For in every state in which the public utility issue was clearly raised, that candidate was victorious who publicly espoused the critical attitude toward the existing relations between the government and the utilities. It was not merely a case of a great Democratic landslide in which all issues espoused by the Republicans were indiscriminately swept aside by a discouraged and disgruntled public. Quite the contrary. In those states where the insurgent position was taken by the Republican candidate, notably in Pennsylvania with respect to Governor Pinchot and in Nebraska with respect to Senator Norris, the Republican rather than the Democratic candidate was elected. The great significance of this fact has already been noted in the editorials of the leading newspapers. The *New York Times,* for example, which no one would accuse of being a radical paper, pointed to the handwriting on the wall, and urged the utility representatives to take steps far more vigorous than they have yet been willing to do in order to get their own house in order and to avoid the retribution that they are otherwise likely to suffer from an indignant public.

WHAT is the specific basis for this criticism of existing regulation, which promises to become a major political issue in the next few years?

The basis is several fold, but it centers primarily in two alleged shortcomings with the machinery and the administration of control by public service commissions.

The first shortcoming has to do with the standard of valuation by which commissions determine the reasonableness of rates charged by public utility companies.

The second shortcoming has to do with the holding companies, which now dominate all but a small fraction of the entire utility industry of the United States.

SO far as holding companies are concerned, the critics of utility regulation allege that the presence of great holding companies, free from control by commissions, has done much to impair the success of the regulating machinery of the public service commission laws.

In this article I shall treat merely this particular count in the indictment of existing regulation. I propose to consider the argument of public utility spokesmen that there is no need whatsoever for regulation of the holding companies, and that the mere control of operating companies by a public service commission is quite adequate to protect the public in its demand for reasonable rates and for the best possible service. I shall not undertake to indicate how far the public service laws should go in regula-

ting holding companies, or even to express a positive opinion that the holding companies should be regulated at all. My task will be the far simpler, and far more limited; it shall be to point out the utter absurdity of the arguments that are now made by most utility spokesmen in support of their position that regulation can be made truly effective without reference to the holding companies. For this position, as defended at least by its own supporters, seems to me so obviously unsound that the only real and truly controversial problems of the holding company cannot even be intelligently discussed until it has been finally and completely disposed of.

A VERY plausible case can be made against the proposal of the insurgents to extend the powers and duties of commissions by including holding companies under their supervision. This case would be based in part on the well-known cumbersomeness and delays of control by commission, and on the tendency of incompetent or overburdened commissions to interfere with the freedom of action and the initiative of skilled business executives. It would also be based in part on the contention that the public utility industry itself is already alive to the various abuses of holding company finance and management, and that it is making rapid progress in putting its own house in order.

When based upon contentions such as these, the case against the regulation of holding companies is at least a plausible one, and its force must be recognized by all impartial experts, whatever may be the practical position which they themselves take. Unfortunately for the cause of scientific discussion, at least, the official spokesmen for the public utility interests seldom rely primarily on arguments as plausible and as difficult to meet as are the particular arguments that have just been stated. They may, and often do, mention them in passing, but they use them merely as a second and inferior line of defense, relying instead on a wholly specious, but far more appealing, general theory—the theory that the public in the rôle of consumers of utility service has no interest in the financial management or mismanagement of the holding companies, and that the capitalization of a holding company, the prices at which it may buy the controlling stock interest in its subsidiaries, and the contracts for management service which it may make with these subsidiary companies, are of concern only to private investors in utility securities, rather than to ratepayers in general.

¶ "As *long as commissions have no control over the holding companies, they are powerleses to prevent malcombinations of properties. . . . The result is that much of the public utility map of the entire United States looks like a crazy quilt, rather than like a well-designed system of superpower companies such as might be set up by any intelligent board of engineers acting in the public interest.*"

WHEN public utility advocates resort to tactics of this sort in their effort to ward off the regulation of holding companies, they take a position so tactically weak and so easily assailed by the critics, that one need not be surprised to find them waging a losing battle. Just as a lawyer, who writes his brief on the basis of two arguments, one of which is weak and the other of which is strong, is likely to lose his case because the fallacies of his first contention are so easily exposed by opposing counsel, so the utility representatives are likely to lose their case in the public forum as long as they allow their meritorious contentions to be obscured by their support of a theory of regulation which the veriest tyro in economics can easily explode.

WHAT, then, is this fallacious position of the utility advocates, and wherein lie its fallacies?

As expressed by the National Conference of Utility Associations which opposed the Federal investigation of holding companies, as well as by Mr. Martin J. Insull and other holding company executives, the argument against regulation runs somewhat like this:

Starting from the premise that the public service laws of our various states are designed to protect consumers in their right to reasonable rates and good service, rather than to protect private investors who hold public utility securities, the brief for the defense goes on to point out that only the operating company, and not the holding company, performs direct public service and collects a charge for this service. The operating company, however, is already under the complete control of a commission, which has the power to reduce rates if they are excessive, and to enforce good service if it is not already reasonable. This power, the argument continues, is in no way impaired by the fact that the stock of the operating company may be owned by a holding company, and that the managerial policies of the subsidiary may be dictated by the management of the parent company. If the holding company is overcapitalized, or if it has paid unwarranted prices for the stocks of its subsidiaries, the loss will fall on the investors in its securities. In no case can it be transmitted to the ratepaying consumers, at least not when the public service commission is vigilant in the exercise of the powers that it now possesses.

It is true that the management of a holding company may attempt to raise the rates of its subsidiaries in order to justify its own inflated capital structure, and it is also true that the management may be tempted to impose excessive service charges upon its subsidiaries in order to increase the profits of the central organization. But a vigorous public service commission can prevent any such attempt from being successful because it has the legal right to fix the return of the operating company by reference to the *value* of its own property without regard to the capitalization of the holding company, and because it also has the right to exclude any excessive management charges in calculating the fair return which an operating company is entitled to earn.

So runs the argument, with many variations. Yet it is an argument so

The Fallacious Theory that Capital Inflation Cannot Effect Utility Rates

"ONE fallacy in the position of the public utility advocates lies in their repeated assertions that the public, as consumers, cannot be injured by the capital inflation of a holding company, nor by the excessive prices at which such a company may purchase the stocks of operating subsidiaries. . . . It is an argument based on the theory that capitalization has no effect on rates, since rates are determined by reference to the value of a public utility property, rather than by reference to outstanding stock and bond issues."

superficial and so naïve in its assumptions of the nature of regulation, that one cannot but be surprised to hear it expounded by intelligent public utility executives.

WHAT, then are its fallacies of this argument?

The more important fallacies are three in number. I shall refer to them briefly without the mass of documentary evidence by which they might be exposed in a more lengthy discussion.

Fallacy No. 1

I. The first fallacy lies in the failure of the argument to recognize the public interest in that form of utility combination which makes for maximum efficiency and for greatest operating economy. Public utility officials have long pointed out the great improvement in service and the reduction in rates which are not merely made possible, but actually realized, by superpower systems. They have not merely alleged, but have actually proved, that up to a certain point, at least, the concentration of adjacent power companies under the control of a central operating and financial organization brings gains to the public no less than to the private investors. It follows as a matter of course, however, that not all utility combinations are equally effective in securing the objects for which they are designed. In New York state, for example, the power map is gerrymandered by rival utility organizations, which, to a considerable extent, have poached on each others' territories, and which have extended their control by reference to considerations of immediate financial gain, rather than by reference to the apportionment of the territory on the basis of maximum efficiency.

As long as commissions have no control over the holding companies, they are powerless to prevent these malcombinations of properties. They may be convinced, for example, that property "A" should be assigned to one holding company and property

"B" to another, yet they have no means of insisting on this assignment, or of preventing the first holding company from seizing control of property "B," and the second holding company from taking possession of property "A." The result of this situation is that much of the public utility map of the entire United States looks like a crazy quilt, rather than like a well-designed system of superpower companies such as might be set up by any intelligent board of engineers acting in the public interest.

To be sure, one may recognize this situation quite frankly, and may yet contend that on practical grounds the power to guide utility consolidations should not be granted to the public service commissions. One may contend that commissioners are not men of the highest intelligence, and that their decisions as to which combinations are desirable and which are undesirable would be based more often on political motives than on motives of the public welfare. This is a plausible argument; but it is an argument of a very different type from the usual contention of public utility spokesmen that regulation can be made completely effective without any control of the holding companies. For it is an argument which concedes the vital public interest in the management of holding companies, at the same time that it insists that the evils of an unregulated holding company, serious as they are, would be offset by the evils of government regulation.

Fallacy No. 2

II. The second fallacy in the position of the public utility advocates lies in their repeated assertions that the public, as consumers, cannot be injured by the capital inflation of a holding company, nor by the excessive prices at which such a company may purchase the stocks of operating subsidiaries.

We have here, in a new dress, the same old argument that was formerly made by railway companies when they still opposed the regulation of their security issues by the Interstate Commerce Commission. It is an argument based on the theory that capitalization has no effect on rates, since rates are determined by reference to the value of a public utility property, rather than by reference to outstanding stock and bond issues.

It should not be necessary at this late day to point out the absurdities of this position. The position is absurd, in the first place, because it assumes that public utility rates are fixed by an automatic process based on a physical valuation of the property used in the public service. It ignores completely the fact that most of the rate reductions which public utility companies have made have been the result of informal negotiations or even of voluntary price reductions, dictated by the managements themselves in the interest of good public relations and of long-run returns. It ignores the fact that a management, when under pressure to earn the high fixed charges and the excessive dividends of a financially inflated holding company, will of necessity fight against rate reductions which endanger the immediate credit position of the company, even though they promise to increase profits in the long run. Still more fatally, it ignores the fact that the public is interested in good service and in the

The Contentions upon Which Are Based the Arguments against the Regulation of Holding Companies:

"A very plausible case can be made against the proposal of the insurgents to extend the powers and duties of commissions by including holding companies under their supervision. This case would be based in part on the well-known cumbersomeness and delays of control by commission, and on the tendency of incompetent or overburdened commissions to interfere with the freedom of action and the initiative of skilled business executives. It would also be based in part on the contention that the public utility industry itself is already alive to the various abuses of holding company finance and management."

extension of facilities quite as much as it is interested in the lowest possible rates. The holding companies of today have largely taken the place of the operating companies as the source of capital funds for public utility enterprise. If these holding companies cannot earn their fixed charges, or even if they are unable to earn dividends commensurate with their capital investments, their credit is bound to suffer and their ability to attract new capital is thereby seriously impaired.

Fallacy No. 3

III. I come now to the third and last reason for believing that the usual arguments against the regulation of the holding company are clearly unsound. I refer to the practice of the holding companies in making contracts for management service and for other service with their own subsidiary companies.

By means of these service contracts most of the great holding companies, either directly or through affiliated corporations, have succeeded in tapping a large source of profits over and above the dividends which they secure as stockholders in their subsidiary companies. Contracts of this kind are never made by the familiar business process of bargaining between two parties at arm's length. Instead, their terms are dictated to the operating companies by the very parent company which owns its subsidiaries, soul and body. Since the one party to the transaction controls the other company, the terms of the contract are very likely to favor the former at the expense of the latter, and since the latter party is the operating company which serves the public directly, it invariably tries to pass on these management and engineering fees to the consuming public.

How do the representatives of the

¶ "By *means of service contracts, most of the great holding companies, either directly or through affiliated corporations, have succeeded in tapping a large source of profits over and above the dividends which they secure as stockholders in their subsidiary companies. . . . Since the one party to the transaction controls the other company, the terms of the contract are very likely to favor the former at the expense of the latter, and since the latter party is the operating company which serves the public directly, it invariably tries to pass on these management and engineering fees to the consuming public.*"

holding companies meet the criticism which has so often been made of this practice? They attempt to meet it by asserting that a public service commission, in regulating the rates of an operating company, has the legal power to disregard all operating expenses that are excessive or otherwise unreasonable. For example, if a commission is regulating the rates of a utility controlled by the Standard Gas and Electric Company or by the Electric Bond and Share Company, it may refuse to include in its calculations any service charges imposed by these holding companies upon the subsidiary in question.

But does this defense really meet the issue which is raised? Clearly it does not do so, and for two reasons.

In the first place, a commission, while it has the power to disallow a clearly unreasonable service charge in a rate case, has no power to prevent the operating company from paying this service charge and from imposing the loss on its own security holders. The loss, however, is not confined to the owners of utility securities, since it may injure the credit of the operating company and thereby impair its ability to give the best possible service. A striking illustration of this situation was called to the attention of the New York Commission on the Revision of the Public Service Commissions Law with reference to a service contract imposed on the Buffalo Street Railway system by the Mitten Management.

But far more serious is the fact that a commission lacks both the information on which to base an intelligent decision as to the reasonableness of a service charge, and the legal power to enforce its findings after it has reached them. It lacks the necessary information because under present laws it does not have access to the books of the holding company, nor does it have the power to prescribe a uniform accounting system by such a company. It, therefore, lacks the information as to the cost of supplying service, without which it is impossible fairly to determine the reasonableness of a monopoly charge. But even assuming that it has been able to reach its own conclusions as to what service charge is fair, it is hopelessly handicapped in enforcing its finding because of decisions of the Supreme Court, holding that the terms of a contract between a parent company and

an operating utility are primarily a question for the management to settle, and that they are, therefore, not subject to revision in the absence of very clear and convincing evidence of bad faith.

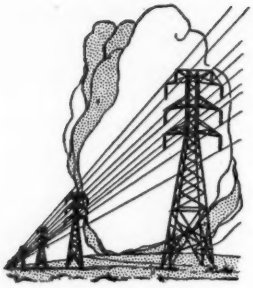
I HAVE attempted in this article to indicate briefly three reasons for believing that the case against the control of the holding company, as stated by most public utility spokesmen, is unsound on theoretical grounds. I have also indicated that a far more plausible case can be made out against regulation, but that this case must be based on a very different premise from that which the official representatives of the holding companies have yet been willing to accept. The premise is that the public has a very decided interest in almost every transaction of a holding company, and that many of the current practices of holding company managements are subversive of the interests of the ratepayer. It remains for the defense to show that the holding companies themselves are alive to their own shortcomings and that regulation of their affairs by government is unnecessary because they themselves will do the necessary housecleaning.

FORTUNATELY, there are already some very auspicious signs of housecleaning on the part of certain of the leading and most progressive of the holding companies. I refer especially to the recent action of the Niagara Hudson Power Corporation serving up-state New York, and of the Commonwealth & Southern Corporation serving much of the south, in announcing the complete abandonment of the lucrative form of management service contract between the holding company and its controlled subsidiaries. These companies have thereby done a great public service in leading the way which, I feel sure, must sooner or later be followed by every holding company in the United States. For their action shows how groundless is the contention, made by officers of other and less progressive holding companies, that their profit-making service contracts are necessary to the growth of the great super-power systems.

Why the Holding Companies Should *Not* Be Regulated

A REPLY *to the contentions set forth in* DR. BONBRIGHT'S *article appears on the following pages; the author is one of the most widely known and successful public utility men in the country,* MR. MARTIN J. INSULL.

In view of the current controversies that are raging over the proposals for governmental control of holding companies—a subject which is occupying the increasing attention of business men, economists, and legislators—the divergent points of view expressed in these two articles constitute a timely and pertinent contribution to the problem.



Why the Regulation of Operating Companies Regulates Rates

How commission control of holding corporations would curtail expansion of utility service

THE expansion of public utility service has been made possible, states the author, through the financial aid extended by the holding corporations; this, in turn, has brought about greater consumption and consequently lower rates. In the following article he points out that inasmuch as he sees no connection between security issues and rates for utility service, the state commissions at present have full power to safeguard the ratepayer against improper charges.

By MARTIN J. INSULL
PRESIDENT, MIDDLE WEST UTILITIES COMPANY

IN this time of business depression and fear the financial situation is aggravated by the statements of various political leaders with regard to the utilities, especially to the electric light and power companies. Particularly outstanding among these leaders are Governor Franklin D. Roosevelt of New York, Governor Gifford Pinchot of Pennsylvania, and Senator George W. Norris of Nebraska.

Governor Roosevelt, in a recent speech in Boston, referred to a "war" —a "war" in which he and his supporters were fighting against the greed of a soulless industry to save the public from themselves—a public pictured as unconscious of the exorbitant rates they are paying for electric light and power; a public, (so statistics of consumption indicate), that is satisfied.

Governor Pinchot is talking about the inefficiency of regulation and proposes the substitution of an elected "fair rate board" in place of the present utility commission of Pennsylvania.

Senator Norris, in a recent article, compares rates in Ontario for residential customers with those in the United States without any reference to the different conditions under which electric energy is generated, distributed, and sold in the territories compared, and says therefore, that our people are denied the many

benefits that come from cheap electricity.

PROFESSOR James C. Bonbright of Columbia University, one of the comparatively small number of intellectuals who interest themselves in what is termed the "power problem," assumes that the success of Governor Roosevelt, Governor Pinchot, and Senator Norris at the November election reveals a dissatisfaction with public utility regulation hardly less than that with our national administration with regard to prohibition, the protective tariff, and farm relief. I have no doubt a Wet or a free trader would draw a similar conclusion from the election as to the public mind on his particular beliefs. In fact, he could bring even more convincing proof, since in some states where the so-called "power problem" was not a political issue, majorities just as overwhelming can be claimed for dissatisfaction with prohibition, high tariff, and farm relief. I cannot remember seeing any references made by Senator-elect James Hamilton Lewis of Illinois to the power question during his recent campaign; yet he, too—a Democrat in the usually Republican state of Illinois—was elected by an enormous majority.

IT does not seem possible that the average voter who paid in the year 1929 a bill of $31.02 per year or $2.59 per month would make that the controlling factor of his vote on November 4th last. It rather insults the intelligence of the voter. Personally, I think he is far more interested in being able to take a drink if he wants it without having to run the risk of breaking the law, than whether he pays $2.50 or $2.25 per month for his electric light and power, if such a reduction were possible. If it is a question of saving money alone, he certainly would save a great deal more than that under more liberal prohibition laws than we now have. The enormous increase in crime and the effect of prohibition on the younger generation might more plausibly explain the November election than the so-called "power problem."

There was, at the end of 1929, a total of 19,967,154 domestic customers of the industry whose aggregate bill was $605,878,000, or $50,489,833 per month or an average bill of a little less than $2.59 per month. That is less than 8½ cents per day—the price of a cigar.[1] More than half of the domestic customers—10,050,000 of them—use only 23 per cent of the energy, so that their average bills are materially less than 8½ cents per day—probably less than 5 cents per day.

The domestic customers do the voting and are, therefore, the only class interested in a political issue. The remaining 4,180,029 customers of the industry provide $1,349,448,000 of its income. Of this, $1,210,571,000 comes from small and large industries divided in the ratio of 48 to 52. These customers are a duplication, so far as the voting list is concerned.

IN the case of large industries, electric power has to compete with all other prime movers, and they, in consequence, are not interested in a power problem except so far as get-

[1] The figures cited in this article are taken from the Statistical Section of the *National Electric Light Association Handbook;* (N. E. L. A. Publication No. 182).

ting service is concerned. As for the smaller industries, electric power has made them possible. From the point of view of "political issues," we, therefore, have to consider only the domestic customers, one half of whom pay an average bill of less than 5 cents per day, and the other half an average of 11½ cents per day—an over-all average of 8½ cents daily. The affluent 980,000 customers who have the largest bills probably do not have an average bill greater than 50 cents per day, but these are less than 5 per cent of the domestic customers.

Statistics indicate that these millions of domestic customers neither ask for protection nor need it. They are not making the "political issue." In the three years ending 1929, their numbers have increased approximately 20 per cent. Their average use of electrical energy has increased nearly 25 per cent, while their average bill has increased only 9.8 per cent.

This demonstrates, at least, that the public wants the service—that it is constantly increasing its use of electricity at a diminishing cost.

An average electric bill of 8½ cents per day would not indicate that there was very much wrong in practice with today's methods of valuation, state regulation of operating companies, and their control by unregulated holding investment companies, or that there was an impairment of regulation due to this control. While Professor Bonbright does not undertake to express a positive opinion that holding companies should be regulated at all, he has declared that it is absurd for me, as a utility spokesman, to say "that regulation can be made truly effective without reference to the holding companies." But from my practical viewpoint, that is what I think. Perhaps from his theoretical viewpoint he may be correct, but I wonder whether under his theory the 8½ cents bill would increase or decrease? I know under past practice and normal business conditions it will continue, as it has in the past, to decrease. Experience has proved that.

Whether absurd or not, I think and say that effective regulation of the operating company is all that is necessary to protect the public interest which has been and is best served by the freedom of the holding company. It is asserted that I have said, with others, in our discussions of holding company regulation, that it is true they may attempt to raise rates of operating companies and charge excessive amounts for service to those companies in order to increase holding company earnings, but that this can be prevented under present day regulation of the operating companies. I have never used such an argument because I do not believe that any reasonably well managed holding company would attempt to raise rates for such a purpose. Furthermore, the record of the industry disproves that this is taking place.

I believe that the ambition of any far-sighted utility executive has always been, and is today, to furnish the best service at the lowest rate possible consistent with a good credit standing of the operating company. A good credit standing is absolutely necessary in order that it may secure from the investing public the new money required to provide the con-

Freedom of Action Is as Essential to a Utility Holding Company as to Any Other Business

"THE holding company or utilities investment company is entitled to the same freedom of action as any other business, and it is that freedom which has enabled it to accomplish great work in this country in the development of our electric industry to a position of world preëminence. Without it, that development would not have taken place, and future development would be materially retarded."

suming public with increased service. That is equally as true of holding company executives in their relation to the operating companies in which their investments rest, as it is of the operating executives themselves. The ability of the holding company to help depends largely on its ability to act without restriction other than those of ordinary private business.

I SEE no connection between the security issues of a holding company and the rates and service of its subsidiary operating companies. Holding companies, like other corporations, must have their securities passed on by state security commissions or approved by such authorities as are recognized, before they are sold. As these commissions in many states came into existence after the utility regulating commissions, the regulation of operating company securities issues in most cases has been left with the utility regulating commissions. Their real function, however, should be the regulation of rates and service, and not that of regulating the issuance of securities. Their approval of the issuance of securities is in no sense a recognition of these securities for rate-making purposes, since the rate base is that of value of property and has nothing to do with the securities issued.

I am raising no objection to present methods, as I recognize that the commissions' approval of security issues keeps them informed on capital expenditures of the operating companies. On the other hand, I see no reason why regulating commissions should carry this extraneous function beyond its present point to the regulation of securities of holding companies in which they have no interest, except through the operating companies which they were organized to regulate. The holding company or utilities investment company is entitled to the same freedom of action as any other business, and it is that freedom which has enabled it to accomplish great work in this country in the development of our electric industry to a position of world preëminence. Without it, that develop-

ment would not have taken place, and future development would be materially retarded.

IN many ways, through this freedom of action, the holding company has made electricity cheaper. This it has done by financing operating companies in the construction of widespread transmission and distribution systems fed by up-to-date, economical generating units. By its constant efforts for lower costs of production of its operating units, it has enabled them to compete with all other prime movers for the industrial power business of the nation. Its operating units have introduced appliances and promotional rates which have increased the diversity and amount of the residence business. This has all been to the end that everyone may be supplied with constantly increasing and better electric service at continuously diminishing rates.

The charges made by holding companies for service to subsidiaries, if above the market price for equivalent services rendered by outside experts, are certainly open to criticism. These charges, however, are subject to revision by the commissions in their supervision of the capital and operating expenses of the operating companies.

BECAUSE operating property A might look better on the map as controlled by holding company X instead of Y—even if it might be better from an operating point of view—is not *prima facie* evidence that under regulation of holding companies the situation would have been different. I do not doubt that even its critics, to say nothing of "any intelligent board of engineers acting in the public interest," could make a better scheme of holding company systems than we have today. But that is hindsight. It is very easy with hindsight to criticise not only our own but everyone else's foresight. Many of us are doing that today. If our national foresight at the end of 1928 was equal to our hindsight at the end of 1930, our Christmas would have been happier and merrier.

Now the industry has the same hindsight as its critics in this respect, and many of the conditions open to criticism now, which were the natural result of a rapidly growing industry, are being rectified by the industry itself. It is not always as easy to do this as it appears, but properties have been and are being exchanged between holding companies or by sales of properties of one holding company to another so as to have a more regular distribution of operating companies. If the holding companies were subject to regulation, their facility for accomplishing this result would probably be materially curtailed. In any event, what difference can it make to the 8½ cents per day customer whether the distribution of operating properties is like a "crazy quilt" or not, provided he is getting good service when and where and in the amount he requires it?

Regulation of holding companies would not affect him.

His interest is in fair and reasonable regulation of the operating company.

THE financing of an operating company in what is considered a well financed holding company sys-

tem is accomplished by issuing 50 per cent bonds, 25 per cent preferred stock, and 25 per cent common stock.

The bonds are sold to investors through investment bankers, and part of the preferred stock may be marketed through the same channel. The balance of the preferred stock and possibly a minority of the common stock is sold to its customers. The major portion of the common stock, or all of it, is sold to the holding company which controls the operating company. Therefore, very nearly or all of 75 per cent of its capitalization is sold to the public. Under such a financial setup, the holding company supplies only 25 per cent of its operating companies' capital requirements, and, therefore, cannot be considered the sole source of capital for its operating companies.

The 25 per cent supplied by the holding company, however, takes the greatest risk of the business. A reasonably accurate estimate indicates that there are approximately 5,000,000 security holders of the electric light and power industry. Judging by the rate at which they are increasing, public utility securities, instead of being gathered in by the few, are rapidly being distributed to a large percentage of our population.

Under such a financial setup, it is hardly correct to take the position that the capitalization of the holding company determines the rates which the consumer shall pay an operating company, 75 per cent of whose capitalization is in the hands of the investing public.

THERE may be other financial setups of operating companies and holding companies, but no matter what they are, they really have no effect on the rate. Rates are not based on securities. Rates are based on value of the property.

Because some people do not agree with the United States Supreme Court as to what constitutes value for the rate base does not license them to discuss rates from such a security base hypothesis.

So that I may not be accused of using figures to my own advantage in trying to better illustrate the absurdity of all this unnecessary agitation of the so-called "power problem" in terms that the Man-on-the-

¶ "EFFECTIVE *regulation of the operating company is all that is necessary to protect the public interest which has been and is best served by the freedom of the holding company. . . . It is true that they (the holding companies) may attempt to raise rates of operating companies and charge excessive amounts for service to those companies in order to increase holding company earnings, but this can be prevented under present day regulation of the operating companies. . . . I do not believe that any reasonably well managed holding company would attempt to raise rates for such a purpose. Furthermore, the record of the industry disproves that this is taking place.*"

Street can understand, I will use the figures as the impartial experts would probably use them. He would say that the yearly bill for domestic electric service in the United States is the immense sum of $605,878,000—without mentioning that this sum is divided among approximately 20,000,000 consumers or $31.02 per year per customer. This enormous bill is caused by excessive rates paid to the "power trust" to make earnings on inflated capitalization of holding companies, to do which they have experts make valuations of their operating companies in accordance with rulings of the United States Supreme Court instead of following the theories of the impartial expert. If these rates were reduced 20 per cent whether they should be or not, we would save the American voters $121,175,600 per year.

This would be $6.06 per year or 1¾ cents per day per average domestic customer.

THIS the impartial expert might do without considering the effect on the credit of the industry and its ability to continue to raise the money to supply the service facilities to meet the ever-increasing service demand of the domestic consumer, farms, and industry. Yet the 8½ cents per day—the average domestic consumer's bill—is the cause of all this hullabaloo about the industry on the part of the politicians, the impartial and partial experts, including utility executives like myself.

Is it not absurd? We all spend time writing magazine articles and making speeches, some attacking and others defending the electric industry, because the domestic consumer pays the industry 8½ cents per day. In the meantime, he goes ahead buying electric household appliances and equipping his farm electrically so as to use more and more of the service even in these times of depression. One of the outstanding anomalies of the panic year of 1930 will be the increased sale of electrical appliances and the increased use of electric energy at decreased cost by the domestic consumer above any previous year, including the great boom year of 1929.

Fie upon us!

LET the politicians spend their time trying to reduce the cost of government, the impartial experts spend their time on things more constructive, and the electric light and power executives spend their time developing better and more service at decreasing rates.

Anyway, let us make an armistice until men who want to eat can find work instead of still further breaking down the confidence and *morale* of the financial and business public by unnecessary discussions of a great industry with a satisfied list of customers and investors. Let us stop disturbing them for a time, and turn our attention to the more important economic and sociologic problems that affect the prosperity of so many people. That would be constructive.

¶ WHAT *is the attitude of the public service commissions toward the advertising expenditures of the utility companies? A review and analysis of commission rulings on this subject will appear in a coming issue of* PUBLIC UTILITIES FORTNIGHTLY.

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

SIR HENRY THORNTON
Head of the Canadian National Railways.

"Labor should be recognized as a partner, with all the privileges of suggestion and advice which are appropriate to a partner."

GEORGE OTIS SMITH
Chairman of the Federal Power Commission.

"My attitude is that no power in the way of public control of utilities which exists under the Water Power Act should be vacated."

ED HOWE
The "Sage of Potato Hill," Kansas.

"The only man who dares Speak Up boldly is the man in the wrong; the man in the right must be very careful, or get his head cracked."

GEORGE P. PORTER
Investment Commissioner, State of Montana.

"I doubt whether 50 per cent of the fake securities or valueless securities are being stopped from sale on account of a Blue Sky Law."

FRANK MCMANAMY
Chairman, Interstate Commerce Commission.

"The grade crossing situation as a whole instead of showing definite improvement is steadily growing worse."

J. G. HUNTER
Engineer, California Railroad Commission.

"The records show that, during the past four years, the number of grade crossing accidents in the United States has remained more or less constant, with a slight decrease during this year."

JOHN J. O'BRIEN
President, Standard Gas and Electric Co.

"Over-regulation of the utilities would be disastrous to local, state, and national development and greatly weaken the part that these institutions should play in the maintenance of general prosperity."

FREDERICK R. BARKLEY
Magazine writer.

"No one with half-adequate information on the Hoover administration's attitude to date will be deceived by the President's denial that he is under the domination of the Power Trust."

ALBERT C. RITCHIE
Governor of the State of Maryland.

"If, as I strongly believe, business should be kept as free as possible from governmental interference, it can deserve and achieve this freedom only by developing a higher order of self-government."

ARTHUR BRISBANE
Editorial writer for the Hearst newspapers.

"It is not complimentary to Congress and it is somewhat of a joke on our noble democracy, but the fact is that big business, which is our real government, feels that the sooner Congressmen go home, the better for the country."

OWEN D. YOUNG
Chairman of the Board, General Electric Company.

"If political forces must be guided by a vision of the unattainable, economic forces must likewise be guided always by a vision of the attainable. The problem of reconciling the two is the most immediate and difficult problem in the world."

DAN MOODY
Governor of Texas.

"The consolidation and extension of public utility lines from community to community, and from town to town, has created a situation which practically destroys the effectiveness of the power given any class of cities or towns to regulate rates."

ALFRED P. THOM
General Counsel, Association of Railway Executives.

"At one time it was considered that the railroads had a monopoly on transportation, but now they have to divide it with the unregulated busses, trucks, waterways, pipe lines, and airplanes engaged in common carrier service. The only monopoly we have now is a monopoly on regulation."

H. A. HANNING
Financier.

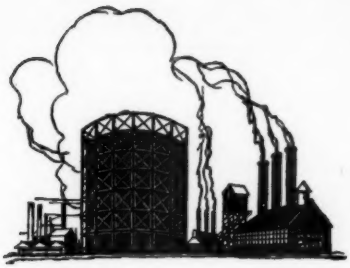
"A survey of all power plants in Canada reveals the obvious (yet none the less astounding in this day of loose talk on government ownership) fact that the private plants sold current 43 per cent cheaper than the municipal plants and distributed 160 per cent more current for each person employed."

GIFFORD PINCHOT
Governor of Pennsylvania.

"Politicians who procure men to debauch the ballot, vote thieves who nullify the franchise of honest citizens, political contractors whose graft supplies the cash for war boards to use in crooked elections, public service commissions that listen complaisantly to their utility master's voice; these are the mercenaries without whom the public utilities would be powerless."

Legal Report, St. Lawrence Power Development Commission of New York State.

"In our opinion the primary purpose of the (Federal Water Power) act is not the regulation and control of navigation, but is an assertion of authority over power projects as such beyond their relation to navigation. In our opinion, such assertion of authority is unconstitutional and beyond the powers of the United States Government, and the Federal Water Power Act is invalid."



When a Utility Company Merchandises

III: When, how, and why the gas and electric company can coöperate with the local retailer.

THE first article of this series (which appeared in the January 22nd number) summarized the rules laid down by the commissions and the courts, and outlined the conditions under which a utility is authorized to sell appliances. The second article (in the February 5th number) told of the effect on rates and on industrial relations when the utility competes with the retail merchant—and when it leaves him alone.

BY NEIL M. CLARK

IN the preceding article, we arrived at the conclusion that merchandising by utilities might well have as its objective the securing of the maximum number of successful retail outlets to give maximum sales and load-building results, and that to this end, the utility might well assume leadership in a program of continuous coöperation with dealers. Before going on to a consideration of particular aspects of this coöperation, two or three additional reasons for utility merchandising must be mentioned.

The first of these has been touched on obliquely. Those who protest against the utilities as merchandisers, are eloquently silent in one direction; in fact, they become vocally energetic only so far as well-established lines of appliances are concerned, such as kitchen ranges, water heaters, toasters, irons, and the like-staples, in other words, for which a steady, reliable, demand already exists. No unusual qualities of salesmanship are required to move such lines. The dealer's task is principally a matter of showing the goods intelligently, and taking the order. As to other appliances. . . .

MURPHY & Son are the principal hardware dealers in a town of 18,000 population. Pressed a few years ago to take the agency for a gas furnace for homes, Mr. Murphy refused.

"Let somebody else do that hard work!" he scoffed. "Nobody here knows anything about gas furnaces. Nobody wants 'em."

To the gas company, however, the gas furnace offered a tempting opportunity to increase the use of gas in that particular locality. In order to popularize the appliance, the company undertook a gruelling campaign. Every completed sale was a back-breaker. It was utterly impossible to do all the spade work of introducing this new product, and at the same time show a merchandise profit on the line.

At first, that is.

But as the work gained headway, several results appeared. Customers who learned the convenience of heating by gas, gradually spread the news. Demand slowly but steadily increased. Sales resistance appreciably declined. And Murphy & Son, scenting profit, today are handling a line of gas furnaces!

THE kitchen range at one time met resistance every bit as severe as the furnace typically meets today. Nobody except the gas companies would do the bitterly hard work of introducing them. Literally trainloads of ranges were shipped into many a town and installed in homes with almost no hope of receiving any substantial sum for them; they were installed, nevertheless, in order to teach the needed lesson that gas was a good cooking fuel. The effort, of course, was astoundingly successful.

Shall we say, now, that it was not productive and justified? Shall dealers say it?

Everywhere today there are dealers who, as Murphy & Son have done with gas furnaces, are making a nice little profit out of kitchen ranges—because utility merchandisers took hatchets and blazed trails through the dark forests of consumer doubts.

IT is a recognized fact, too well-known to need elaboration, that an important new product can hardly ever be introduced with a reasonable chance of returning immediate profits to its sponsors. The initial spade work costs money. A lot of money; modest fortunes, very often. The little man, or the man with little to gain if the effort succeeds, is not the one to spend all that money. It must be spent by those who, taking the long look, see great ends to be achieved. Unless *they* do it, ordinarily it is not done.

Every utility appliance on the market today had to be pioneered at some time. Even improvements in staple appliances often meet stubborn sales resistance, that must be met by special effort of a pioneering character.

The average dealer, with no interest beyond immediate profits, can not be expected to put much energy into this special effort. Unless the utility does it for appliances, there is no guarantee or likelihood that anybody will; and if no one does, the public is the loser by missing the benefits of progress. On the other hand, if the utility does do it, eventually a market is created which the utility itself will not completely supply—and then the dealer can step in and skim off the easy cream of created demand. This has happened on every leading appliance. Who is fool enough—or wise enough—to declare with any degree of assurance that the last word in appliances has been said; that there is no further need for pioneering sacrifices?

"Very well, then," some have sug-

gested, "if that is the situation, why not separate appliances into two classes: staples, shall we say, and specialties, novelties, new developments? Why not have utilities leave the handling of established staples to independent dealers, and confine their efforts to pioneering the new, load-building appliances? Wouldn't that solve the problem?"

SOME utility executives prayerfully wish it would. They have no love, by and large, for their enforced merchandising activities. They are gas men. Or electricity men. But they say (and it seems undeniable), that Solomon himself would have to come to earth again to decide at what juncture a staple becomes a staple. For, they ask, when one discusses "the staple kitchen range," which one is meant?—the somewhat antiquated range of five years ago? Or the completely modern range of today? Or the range to be sold five years hence, with all improvements that will undoubtedly be made in the meantime?

And they also ask, who will take on the thankless task of standing godfather to all the improvements that mean so much to public comfort, convenience, and pleasure? Where the interest is greatest, they regretfully conclude, there the responsibility must reside.

The utilities must merchandise, then, for the reason that they alone have enough at stake to guarantee that the necessary pioneering will be done —and there is no industry of any consequence in the world today, unless it is rapidly approaching senility, that does not have some jobs of pioneering to do at all times.

A SECOND cogent reason for utility merchandising calls for frank speaking. In a great many places, the local appliance dealers are not up to the job.

Yes, the truth may as well be spoken right out loud. Many of the contractor-plumber-electrician dealers, who think they would like to have the merchandising of appliances left exclusively in their hands, do not know the a-b-c of aggressive salesmanship and merchandising, and often appear not to care. Accept business that comes without difficulty? Oh yes, any of them will do that! But go after it constructively and intensively, fight for it tooth and nail? The small fellows who do this on their own initiative are bright and shining exceptions, almost as rare as the late Bert Williams' "tickets to hebben."

UPON the evidence of the secretary of their own association, I find that of 156 licensed master plumbers in a city of nearly 300,000, only one is keen enough after business to own

¶ "EVERY *utility appliance on the market today had to be pioneered at some time. . . . The average dealer, with no interest beyond immediate profits, cannot be expected to put much energy into this special effort. Unless the utility does it for appliances, there is no guarantee or likelihood that anybody will.*"

a panel body display jobbing truck; only one is doing radio advertising; less than 20 per cent have presentable showrooms that the average housewife would care to enter; barely 10 per cent have sufficient capital and financial standing to make arrangements enabling them to sell on time payments. And it is from the ranks of such as these that the naïve query comes to an editor whose bread is buttered:

"Why not have the master plumbers unite and ask Congress to make it illegal for the gas companies to sell or install either gas or electrical appliances?"

EVEN when these smaller dealers are led to the feed bag, they often decline to eat—or else fail to do so through neglect or laziness. In one city where the electric company has made special efforts to coöperate with dealers, to secure their good will, to help them make money on appliances and installations, an interesting campaign was put on not long ago, with illuminating results. As far as the utility was concerned, it was a load-building endeavor. However, it was handled in such a way as to be also an attractive merchandising opportunity.

"Why," queried an enterprising vice president of this company, "do we not get more load from electric coffee percolators?"

He reasoned that although a good many percolators were sold, most of them were too "pretty" to be used much. Their owners considered them essentially sideboard ornaments, to be used when company came; but on all ordinary occasions the coffee was made in the kitchen in a cheap but easily cleaned pot. So he decided that the thing to do was to introduce an electric percolator designed, not to gather dust in the dining room, but to make coffee in the kitchen.

He called upon manufacturers for help. He explained what he wanted. Something, he said, that would brew coffee every bit as well as the most expensive percolator, yet could be sold at a rock-bottom price. Made not of fancy metals, but of aluminum; stressing utility at every point.

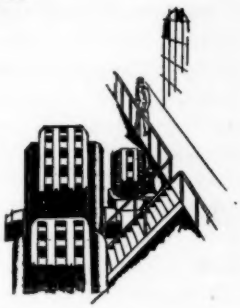
"Give me a bid," he said, "on the basis of an order for 10,000. I may take more."

In due time, from designs submitted, a selection was made. The chosen percolator was bought from the manufacturer at a unit price which allowed a mark-up of 70 per cent to give the intended selling price of slightly under $5 each and 50 cents additional on time. An ample margin of profit for anybody.

WITH a view to securing maximum distribution, and in line with his customary policy of coöperation, the utility executive offered all electrical dealers in the city full participation in the campaign and equal opportunity to share in the profits. He arranged that the wholesaler should carry all reserve stock, thus making it unnecessary for the dealer to invest a penny, except for a few samples. All the latter had to do, in fact, was to solicit orders from his customers—for an unquestioned bargain, remember, a very unusual value—and pocket a handsome profit. In order that the dealers might have an equal chance with the utility in every respect, the latter agreed to make col-

When and Why a Gas or Electric Utility Refuses to Service an Inferior Appliance

"WHEN the representatives of a utility company know positively that a given appliance is inferior, perhaps dangerous, and refuse on that account to service the old rattletrap, it seems by every test that they are doing the right thing; in the long run, the thing that will be wisest for themselves, consumers even dealers. And that is precisely the policy followed by utilities bent on coöperating with dealers."



lections, assuming all risk of loss on dealers' time sales, paying the dealer the full amount of the sale less 20 cents for carrying charges and losses. The dealer was not required to endorse the paper. The time-sale terms were a further aid to easy selling: 95 cents upon delivery, the balance in five months, collected with the light bill.

Here, then, was an ideal layout. A public utility not only willing but anxious to coöperate on most liberal terms. A product of unusual value, supported by terms and a publicity campaign urging the public to buy at the nearest electric or hardware store which resolved the actual closing of the sale to little more than saying:

"Here it is, ma'am. The very thing you want. Sign here."

That this was so was proved by the utility's own nonselling employees. One meter reader, untrained in salesmanship and without interfering with his regular duties, sold 600 of the percolators in a month, merely by mentioning them to housewives as he made his rounds; other meter readers sold almost as many. A stenographer from the head office went out fifteen evenings, a couple of hours each evening and also sold 100.

But—what of total results?

DURING the four weeks of the special campaign, approximately 11,000 percolators were sold. Of this very large number, only 400 were sold by 125 dealers, the balance by the utility. An average, on the face of it, of about three to each dealer who participated. As a matter of fact, the large majority of the 400 percolators were sold by three live dealers. And in only 35 percolator sales did a few dealers take advantage of the utility's offer to finance time sales.

One who knows small dealers in the gas and electrical appliance field very well from long experience, because he is one of them himself, makes a vital query when he asks:

"Even if they are successful in getting appliance business on a fair competitive basis, will they really sell, or will they continue to let others handle the profitable business?"

Many utility executives confess that they would only too gladly resign from the thankless merchandising job, if they knew positively that it would be done, and done well, under any and all conditions, by private dealers. But that is the very thing that many a bitter experience has taught them will not happen.

A THIRD reason for utility merchandising needs passing mention.

"Except through merchandising," a utility executive points out, "the utilities have no favorable contacts with consumers. None."

The call of the meter reader cannot ordinarily be called a favorable contact. It is more or less a nuisance. Somebody has to go and open the door for him. He may not track mud over the floor; still his visit, brief as it is, is not exactly a moment of unalloyed delight.

If something goes wrong and the utility's service man has to come, that too is one of the minor trials of life, to be endured with a smile if possible —but not likely to engender lifelong love for the utility.

Nor does the receipt of the monthly bill usually call forth nine 'rahs for Dear Old Utility. More often it precipitates a growl and a grumble.

But through merchandising, the utility does have an opportunity for favorable contacts, and for a great many of them. Henry Peck over the bridge table may begin to rage at the electric light company; but suppose Mrs. Jack Jones speaks up and says:

"Well, *I* don't think they're so bad. Now, I was down there last Saturday, and I got the *darlingest* toaster. Want to show it to you, Mary. And the *nicest* young man waited on me. . . ."

That is a favorable contact, is it not? And its effects may carry a long ways. The cumulative effects might well mean the difference between hostility or indifference to the utility, and positive friendliness for it.

IN discussing, thus far in this article, reasons why the utility usually must merchandise, we have incidentally given some samples of the policy of coöperation. It remains to deal more specifically with certain dealer complaints, and to show how the policy of coöperation typically meets them.

First, the whole question of alleged price-cutting by utilities, the operation of merchandise departments at a loss, and the plaint that merchandising losses are passed on to the consumer sooner or later in the form of higher rates.

As to this last, whether or not consumers really do pay more, it would take seventy-seven bald-headed statisticians months to prove a case either way; and probably they would end up in a cat-fight. That is to say, no one knows, probably no one can know by measuring details, whether losses incurred by utilities on merchandising activities (if and when there are such losses) ever are the direct cause of higher rates. Many factors are involved. The total result is the only possible guide.

It is true that the merchandising loss, when there is a loss, can be laid on the table in black and white—or more accurately, red! It is tangible, comprehensible, so many dollars and

cents. And if carried to the utility's overhead, it increases the overhead by just that amount. And who pays the utility's overhead? Ah! the public. Then rates must be increased—must they not?—to pay for the losses.

Such "logic," however, will satisfy only the superficial reasoners. There are other factors. The appliances which were sold (even if at a loss) no doubt increased the consumption of gas—or electricity; made, no doubt, in the direction of more economical use of the utility's physical investment; and since the amount of profit that the utility can make is under regulation, and rates are governed thereby, it is distinctly probable that in the long run any such merchandising loss is more than made up by gains directly resulting from the merchandising activities; which gains are passed on to the public eventually in lower rates. It is certainly a blind hope to assume, as some of the less critical opponents of utility merchandising have done, that consumers "will have their rates reduced when the utilities are forced to quit merchandising."

THE line of reasoning taken above is simply that by which economists explain the enormous success of some of the greatest modern business enterprises. We have already referred once to the fact that William Wrigley, Jr., spends millions of dollars a year in advertising. Why does he do it? In order that he may sell a package of chewing gum for 5 cents. Were it not for the millions spent now and in the past, in creating demand, that package of gum would almost certainly cost you and me 10 cents, and perhaps even 20. Volume is the answer. Volume of sales, volume in production, making the economies of mass merchandising possible. Is there any need to mention Henry Ford?

In a perfectly definite sense it could be maintained, if there were any need to do so, that the utility's merchandising activities are to be considered as legitimate advertising expenditure, aimed at getting volume—and by getting volume, to keep rates low—and by keeping rates low, to get still more volume, in order to get still lower rates, etc.

WHETHER the merchandising departments of utilities operate in the black or the red is really of very little concern to dealers. What does worry them is the utility's opportunity to cut prices on merchandise and, as they say, to make consumers pay the difference on gas or light bills. It remains to be proved that utilities are the worst price-cutters in any very large number of communities. Certainly in many places, exactly the opposite is true. But for the moment, that is beside the point. Places do exist where the utilities are price-

¶ "COMPANIES *that have adopted the policy of coöperating with dealers, therefore, have gone to special pains always to avoid price-cutting or even the appearance of it, except in cases where dealers can also cut and still earn a good profit.*"

slashers. Rather ruthless ones, too. And we have seen through specific cases how the policy can engender bitterness and encourage retaliation.

Companies that have adopted the policy of coöperating with dealers, therefore, have gone to special pains always to avoid price-cutting or even the appearance of it, except in cases where dealers can also cut and still earn a good profit.

Now as to a second complaint—that the utility company can, and "sometimes does, refuse to service appliances which it does not sell."

The real point at issue here is the fear, whether justified in any large number of cases or not, that the utility may use its special position to knock anything the independent dealer sells.

When you or I (I mean, those of us who have nothing to do with utilities except to use their service) have any trouble with gas or electricity in our homes, our first thought is to call up the public service company and ask them to rush a man over. And they usually do. That is the average experience, at any rate.

Now, if their service man called to inspect a vacuum cleaner of mine that failed to work, and he asked: "Where did you buy this?" I'd tell him, if I knew. And without taking offense at the question. Suppose he then said:

"Well, I think you better call them up. Something here is broken. They can probably make a better adjustment on it than we could."

That wouldn't offend me, either.

Again, suppose he said—and smiled while saying it: "Whoever sold you this must have seen you coming."

"Why?"

"Well," grinning, "it's worth just about what you paid for it—and dear at the price!"

If he went on to tell me what and why, and if what he said sounded reasonable, so that I felt an inner conviction of error, I might kick myself—but still I would not be offended at the public service company. In fact, I should think it rather decent of their service man to put me wise and tell me the true state of affairs.

But take another case. Suppose I had shopped around and spent my money, as I honestly believed, for one of the best appliances on the market, and paid plenty, but not to the utility—and then suppose their service man came and saw it and gave me the horse laugh, and said:

"Well, so you let 'em soak you for that, did you? It's no earthly good. You'll have all sorts of trouble. Why didn't you buy a so-and-so, which we carry?"

Then I might get good and hot, and proceed to think what I always do think of the fellow who tries to sell me *his* pop-gun by knocking every other pop-gun in which I happen to show an interest. I would think he was a rotten salesman. I would think the public service corporation was a rotten organization for tolerating him. My faith in my own judgment would simply be reassured. I would be a stronger booster than ever for the dealer who sold me the appliance that the service man laughed at. For it was a pretty smart merchandiser, with a knowledge of buyer psychology, who said:

"If your competitor knocks you, you've got him licked."

Recent Rulings of Two Attorney Generals on Utility Merchandising:

THE attorney general of Nebraska has recently ruled that a corporation, whether publicly or privately owned, which is chartered only to sell gas, may also sell appliances.

The attorney general of North Carolina has recently rendered an opinion that a law of that state, imposing a special tax on chain or branch stores, is applicable to a public utility operating two or more retail appliance departments.

So if I were an appliance dealer, I think I should take pains to locate in a town, if I could find one, where the public service company made a practice of running down competitors' appliances without cause; for I would be sure to find so much accumulated resentment against the utility, that I could do a first-rate business there. That company would be painfully soft somewhere in its managerial intelligence. By its tactics it would have stored up trouble for itself. Plenty of it. And I should reap the benefit.

On the other hand, when the representatives of a utility company know positively that a given appliance is inferior, perhaps dangerous, and refuse on that account to service the old rattletrap, it seems by every test that they are doing the right thing; in the long run, the thing that will be wisest for themselves, consumers, even dealers. And that is precisely the policy followed by utilities bent on coöperating with dealers. Some go even further, and frankly try to get dealers to give up poor appliances in favor of better ones in order to better safeguard their customers.

Now as to a third source of complaint: namely, that utilities "are allowed to sell items on a deferred payment plan and collect the payments with their bills for service."

The tight shoe here is the fact that utilities have notably small bad debt losses on service accounts, owing to their right to impose cash penalties or discontinue service for nonpayment; and if they have equally small losses on merchandise accounts, as a result of billing both accounts together, independents claim they are put at a disadvantage.

The utility cannot legally collect for merchandise in the same way it collects for service; that is, by threat of penalties. But it is argued that utility customers do not know this; that at best, their information on the point is vague; that eight out of ten probably imagine the utility can shut down on them. And unscrupulous collectors from some public service companies undoubtedly do foster this notion and

use it as a handy weapon to frighten the dilatory. Probably, too, some customers who anticipate difficulty in meeting installments, deliberately prefer to buy from dealers who, they feel, will not press them so hard.

The problem is not easy of solution. Some utilities that are careful to cultivate the good will of dealers, go to the expense and trouble of separate billing. This costs more, and is not especially in public interest.

A UTILITY executive who was meeting the dealers of his city in personal conference over this point, said to them:

"Well now, what do you want us to do about it? What are your suggestions? Obviously we can't leave an open door for dead beats by printing on our statements, 'You don't have to pay the merchandise account promptly!' But we are willing to go along with you, and do whatever we can to put ourselves on an equal footing. What do you want?"

Not one tangible suggestion was offered!

THIS much is clear: it is improper and unfair for the utility to allow collectors to threaten a penalty or discontinuance of service in the event of nonpayment of merchandise accounts. As a practical matter, it is sometimes hard to enforce the rule. But means of disciplinary action can be provided, if violations are discovered; through the grievance committee of the electric league, for example. The sum of it is that it is sheer folly to ask utilities to become poor collectors. Perhaps it is not beyond the power of dealers, however, to tighten up their own credit methods and become better collectors, and some far-sighted utility executives have gone so far as to help them in doing so.

It may be said, in fact, that the policy of coöperation can be just as comprehensive, inclusive, and effective as the brain of the utility executive who directs it, or as the ability of the subordinates who carry it out. It can be extended to include innumerable things.

In one city, for example, where the electric light company merchandises actively, the company pays 50 per cent of the expenses of the local electric league. Recently the league financed a coöperative campaign on electric refrigerators. The ground floor of a downtown building was leased for a week, and various dealers were assigned space. During this one week, the dealers sold no less than 500 refrigerators. The light company, through the league, paid half the cost, yet purposely did not even enter a display of its own.

IN another city the question of installations is handled with particular fairness. Gas furnaces, for example. The work is distributed equitably among furnace contractors. They receive a price for each job that carries a nice profit. Furthermore, if a contractor digs up a furnace prospect, the utility agrees to do all the selling, and if successful, gives the contractor—who has not invested a penny in stock or time—a merchandise profit amounting to 20 per cent of the list price of the equipment.

And so on. A list of specific methods might be extended indefinitely.

The management of one company has committed itself to the idea of maintaining the proportion of the appliance business it now has, with no effort to increase it. This utility does about 10 per cent of the total appliance business in its territory: a volume large enough to assure leadership, and to give "tone" to all the appliance merchandising there. That is all the company wants. An ideal falling far, far short of monopoly.

The thing that really matters, of course, is the temper and intention of the men behind the methods. Do they hold a dime close to the eye and hide the moon? Or do they habitually see well past their noses?

My story is told. In summing up, I cannot do better than present a carefully considered program which, if it does nothing more, at least furnishes a concrete starting-point for argument—is a springboard from which to plunge into the intricacies of local situations.

A MERCHANDISING PROGRAM

Object: To cultivate the maximum number of successful retail outlets, to give maximum sales and load-building results.

Price Policy: Sell at list price, or at a reasonable mark-up, with no cutting except under special circumstances, and then ordinarily only when independent dealers can offer similar reductions.

Down Payment and Terms: Offer only such terms as a reputable dealer can get from a reliable finance corporation.

Servicing: In so far as possible, service any appliance the customer may own and want serviced; but when appliances are downright inefficient or dangerous, let advice be given—no matter whom it hurts—that is to the best interests of the customer and the customer only.

Lines to Be Carried: Limit these to gas and electric appliances. For the utility to extend its merchandising into other fields simply invites trouble, accomplishes little good, imperils other efforts toward coöperation and good will.

Premiums: As a species of price-cutting, premium inducements are not to be encouraged, if dealers are unable to offer equivalent inducements profitably.

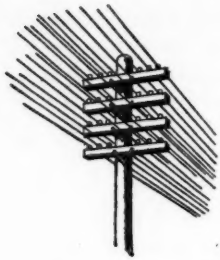
Combination Offers: Same as premiums.

Trade-Ins: Do not use the trade-in inducement as a cut-throat weapon. The object of trade-ins should be to get bad equipment off the line, not to discredit rival appliances.

Billing: There seems no legitimate reason why appliances and service should not be billed together. Where the utility is frank and in earnest about coöperating with dealers in other respects, they can usually be made to see this.

Lastly; because the utility occupies a special position and admittedly makes its profit primarily from the the sale of service; because, too, it derives a direct and continuing benefit from every appliance, whether sold by itself or an independent dealer—the utility has a special need, as a matter of self-interest, to lean backward upon questions involving fine points in the ethics of merchandising.

Judged by any but the most casual and temporary standards, the utility which is most aggressive in merchandising is precisely the one which also spends most thought, effort, and cash on intelligently aiding and abetting independent dealers.



Regulation by Intimidation of State Commissioners

Three incidents from the history of the State Railway Commission of Nebraska that illustrate the methods sometimes employed to influence its decisions by threat of political disaster to its members.

By H. T. DOBBINS

THE misgivings with which so many citizens regard public officials in this country have not spared the members of the state regulatory commissions. To it, indeed, may be attributed much of the doubt which has been raised in many minds as to whether or not commission regulation is sufficiently effective to really serve the public interest.

Recently—as the exchange of experience between state commissioners has shown—this suspicious attitude has assumed a form of belligerency that in some cases has resulted in an effort to intimidate the members of the commissions. The object is, of course, to force action, not upon the merits of the case or upon the facts developed at hearings, but upon the basis of what appears to be politically and personally expedient for the commissioners.

Almost from the beginning of commission regulation, public officers who have been entrusted, either through election or appointment, with the task of ascertaining and establishing proper utility rates have been subjected to pressure. Sometimes this pressure comes from the utility companies which are seeking additional revenue; sometimes it comes from those who must supply this additional revenue. Despite the fact that the commissions have almost the legal status of courts, citizens have not felt that they were violating either ethics or the proprieties when they urged their viewpoints in rate matters and controversies in private; the commissioners, themselves, who also act in the capacity of investigators of facts as well as takers of testimony, have not generally objected to these overtures so long as these were confined to proffers of information that is pertinent to the inquiry and which later may be made

a part of the official written record of the case.

STATE commissioners, like other public office holders, have served, during political campaigns, as targets for shafts of criticism. Their opponents have not been hesitant in pointing out that during eras of increasing prices the commissioners were approving rate increases and failing to order any reductions, and these actions are submitted as proof that the commissioners are the "tools of the utilities" and should be ousted from office as betrayers of public trust. In some states charges of this kind have come to be accepted as the inescapable fate of those who occupy or aspire to office. Even the high and low court judges who are chosen by ballot undergo such assaults when they run for reëlection.

Nevertheless, whatever the motives of such allegations, they constitute a direct challenge to the state commissioners; sooner or later the commissioners must face this attack if they are to preserve the authority of their official positions and if their orders are to command the respect they deserve.

How this attack has been met by the members of the state railway commission, which has control over the rates and services of common carriers and public utilities, furnishes a colorful chapter in the history of Nebraska regulation.

PERSONS who have appeared before the Nebraska commission have learned by experience that they must treat it with as much respect as they demand for themselves. Not that the formal atmosphere of the court room has been substituted for the around-the-table fellowship of business conferences, but rather because the commissioners insist that those who take part in a conference shall assume that it is a meeting of men for the purpose of honestly and fairly determining whatever the issues may be. And, as the dynamic chairman, Charles A. Randall, has demonstrated more than once, no one is welcome there who has shown in advance that he has but slight confidence in the honesty or fairness of the commissioners. In fact, he is fairly certain to find himself peremptorily barred.

To be specific:

A GROUP of government-ownership advocates of Harvard, Nebraska, has been active locally, particularly in the matter of telephone service and rates. At the recent election they were active backers of a proposal to place Clay county into the business of owning and operating a county telephone system. (The project, incidentally, was defeated by a five to one vote.)

The exchanges in Clay county are owned by the Lincoln Telephone & Telegraph Company, a large independent organization that operates in twenty-two counties in southern and southeastern Nebraska. One of the principal cities it serves is Hastings, a live, growing municipality located in the county immediately adjoining Clay county. It is not very far from an enterprising rival, Grand Island, which is served by the Northwestern Bell Telephone Company. Grand Island rates have been higher, over a period of years, than those in Hastings. As the latter town grew in size and business importance, the inade-

quacy of the Hastings rates led to the submission by the Lincoln Company, first to the community and later to the commission, of a proposal to substantially increase these rates.

Although the Grand Island rates had been fixed by the Federal court and hence had legal sanction, a group of municipal-ownership advocates who had the attentive ear of the editor of a weekly newspaper at Hastings, proceeded to beat the tom-toms of opposition to the request of the Lincoln Company for approval of a schedule that ranged from 15 to 20 per cent lower than that in effect at Grand Island.

THE Hastings newspaper started a subscription list to raise money with which to hire attorneys and experts. The telephone company was assailed; personal letters were written to the commissioners. A mass meeting was called for the purpose (so it was stated in the announcements), of resisting any rate increase; speeches more or less denunciatory of the commission were made. To aid in ascertaining the facts of the case, the commission offered this group the expert services of B. E. Forbes, who has been with the commission for seventeen years as engineer and accountant, as well as the help of Hugh LaMaster, the legal expert of the commission. But the more vociferous of the agitators refused their aid. On their own account they raised the sum of $500, and with that amount they finally contented themselves with employing a former telephone manager to check up the exhibits. The real job, nevertheless, was done by Mr. Forbes and Mr. LaMaster.

The commission deferred the hearing from February till May; when a date was finally announced, the protestants insisted upon longer time. When the commission indicated that it would not grant this delay, the commissioners were denounced as arbitrary and unfair. The following peremptory telegram was sent to them:

> "The interests of the public demand that you grant further delay, and if you have the hearing at the present time it will be a rank injustice to the citizens of Hastings and the community."

CHAIRMAN Randall rose to the occasion. He asked his colleagues to permit him to handle the case. He is no amateur in such matters. He is serving his second term on the commission; he has been a successful banker and farm operator, a state fire marshal, and a state senator. He has long been regarded as a progressive, though not a radical. When he reached Hastings he found the courthouse filled with an audience that gave indications of being hostile. He took the bull by the horns—as he had planned.

Abruptly he told the people present that before he took testimony, he proposed to make a statement.

He then proceeded to explain the organization of the state commission; how it functions in rate matters, and how its duty, under both the Constitution and Supreme Court decisions, is to find a rate that will yield a fair return on actual investment. He pointed out that the commission does not have the protection that is given to the courts, and that it is consequently subject to criticism and abuse from which the courts of law are

The Political Assaults against the Public Service Commissioners

"STATE commissioners, like other public office holders, have served, during political campaigns, as targets for shafts of criticism. Their opponents have not been hesitant in pointing out that during eras of increasing prices the commissioners were approving rate increases and failing to order any reductions, and these actions are submitted as proof that the commissioners are the 'tools of the utilities' and should be ousted from office as betrayers of public trust."

shielded. Never before, however, had its members been subjected to insinuations of dishonesty, ignorance, and unfairness as in this case. He read newspaper clippings and cited what some of the speakers had said in attacking the integrity and judgment of the commissioners. He declared that in his case forbearance had ceased to be a virtue, and that personally he did not propose to submit to such forms of intimidation as has been used in the preliminaries to the hearing.

His remarks on that occasion are worthy of being quoted verbatim. Here they are:

> "As long as I am a member of the state railway commission, no man, wherever he may be placed in the scale of society, will be permitted to challenge the honesty, intelligence, or fairness of members of the commission without being instantly called to account. Unfortunately, the law does not give this body the power to punish for contempt, but there is no barrier to bringing those who use this method of intimidation of public officers before the bar of public opinion. I have lived nearly fifty years in the state, and have been honored with many positions of trust and confidence. There is no reason why, at my time of life, I should forfeit public respect by being false to my oath of office or disloyal to the public interest, and when any man states or implies that I have done so, I shall use whatever power I possess as a commissioner to bar him from appearing before it in any capacity, and as a man to challenge his veracity and good faith."

THE case went to a hearing. It was revealed that a speaker—whose name will be mentioned hereafter—had a short time before announced at a mass meeting that the members of the Nebraska commission enjoyed intimate social relations with the telephone officials and that they were, for that reason, incapable of rendering a fair decision. In due course a decision was given; it found that the telephone company was entitled to the rate increases asked.

The new rates have now been in effect for nearly half a year, and the company is experiencing no difficulties with the people it serves.

The agitation, it was found, was started by less than half a dozen men

who had apparently succeeded, by their ballyhoo tactics, in working a small group of people to a high state of excitement.

COMMISSIONER Randall's opportunity to discipline the leader of this little group came shortly thereafter when he went to Guide Rock to take testimony in an application of the Lincoln Company for an increase of rates. Before him appeared as attorney for protesting subscribers, Mr. Paul of Harvard—the very man who had charged at the Hastings mass meeting that because of the intimate social relations between the commissioners and the telephone officials a fair decision could not be expected.

Commissioner Randall again rose to the occasion. He challenged the truth of this charge, and when Mr. Paul declined to retract, the commissioner promptly barred him from appearing in the case. He told the group which Mr. Paul represented that it would be given time to employ another attorney—and he told it that it was useless to proceed with Mr. Paul in the case, since he had challenged the integrity of the commission even before the hearing was begun.

The case was forthwith adjourned.

WHILE only those who are ignorant of court practice and procedure attempt to influence the action of a judge by personal threats, nevertheless it is a common experience for members of regulatory commissions to be informed that if they permit a public utility to increase rates they will be punished at the ballot box. Usually the men selected as the targets for this form of attempted intimidation are the commissioners whose terms of office are about to expire. Apparently they are assailed on the theory that they can be most easily influenced in view of the elections that face them. On occasions, committees of citizens call upon a commission to protest, in advance of a hearing, against some anticipated decision; they usually manage to get across the idea that any action contrary to that which they demand would make the commissioners unpopular in their community.

Here is another specific case:

FOR seven years John E. Curtiss was secretary of the Nebraska commission; because of his unusual training and experience he was eventually appointed a member. One of his first tasks was to consider an application of the Lincoln Telephone & Telegraph Company for an increase of rates at one of its most important small cities, Fairbury. Promptly he became the object of attack by a group of local radicals, whose spokesman was the editor of a weekly newspaper. When the telephone application came before the commission, Mr. Curtiss received a number of letters (most of them anonymous, as is usual in such cases) warning him that if he voted for a rate increase he "would not get a vote in Jefferson county at the election."

Mr. Curtiss filed for reëlection, but later withdrew his name and resigned from the commission. He makes no secret of the fact that this form of intimidation was largely responsible for his resignation. Upon his retirement he observed:

"The commission is a political graveyard. In other departments of the public service which train those

who compose it to higher efficiency, a person is assured of a long tenure of office, with congenial work of increasing value to the public, or of promotion to a wider field of activity with a corresponding increase in his remuneration. The almost invariable rule with the Nebraska commission has been that a member's services are dispensed with after a few years with practically no other market left open for his trained services except the public utilities. When he enters this field those who are mainly responsible for his change of employers proclaim it as proof of his friendship while in office with the public service corporations. I have had enough!

" . . . It is evident that there are enough individuals who, because of prejudices against corporations, or because they are unwilling to accept the judgment of a tribunal created by law as to what constitutes fair prices for the services corporations render, pursue a course of action intended to confuse, and which results in misleading the many who are uninformed as to the functions, powers, or methods of procedure of the regulatory bodies. It means, quite often, that a commissioner must choose between obedience to his oath of office or playing the demagogue and pretending to be a harsh taskmaster of the utilities under public control. Overt acts of intimidation during my service largely consisted of letters and weekly newspaper editorials of a character evidently intended to be threatening—an insidious form of coercion that is as disintegrating to *morale* as it is annoying."

The experience of other former commissioners has been similar. They have on occasions had to face a hostile crowd, drawn to the hearings by the clamor of agitators.

At Bloomfield, on one occasion, the locally owned telephone company, after rebuilding its plant, asked for an increase of 25 cents a month for the various classes of service offered. One of the local newspapers took up a fight against the proposed increase. Bankers and others called upon the Nebraska commission to urge that the request be denied. The testimony was not disputed by the agitators; they simply said they did not propose to pay any more for service.

At the hearing a hostile audience appeared. As soon as the order was issued by the commission, nine out of ten of the telephone subscribers signed a demand upon the company to take out their instruments. The "strike" lasted for months; in the end the company sold out to its employees. The new owners reduced the rates to the old level, but they were unable to make both ends meet and eventually they too faded out of the picture.

Intimidation of state commissioners in another form and from a much higher source marked the experience of Harry G. Taylor, who is now the public relations counsel for the car service division of the American Railway Association. Mr. Taylor is the only Nebraska commissioner who was ever elected for a third term;

¶ "The *commission in Nebraska, as is true in other states, has never been able to make the public understand that it was created for the purposes of establishing and enforcing fair rates and not merely to prevent rate increases.*"

the explanation may be found not only in his unusual personal popularity, but also in the fact that he was a candidate at elections when his party polled more than ordinarily heavy votes. He had an excellent record both as a progressive editor and as a progressive legislator at a time when that term meant a determined effort to release the state government from corporation control. It was as a progressive that he was elected in 1912 to the commission, yet (if his critics are to be believed) his election to office immediately transformed him into a "truckling hireling of the corporations" which were eager to deny the public its rights.

AFTER years of service as a commissioner, during which time he handled much important litigation for the state and was honored with the presidency of the National Association of Railroad and Utilities Commissioners, an opportunity arose for Mr. Taylor's promotion to a place on the Interstate Commerce Commission, for which his experience and abilities had well fitted him. The Nebraska legislature endorsed him for this position; President Coolidge indicated that he would make the appointment, provided only that it would not be opposed by the two Republican Senators from the state.

Mr. Taylor did not receive the appointment because these two Senators made it plain that it was not agreeable to them. Both of them set down their reasons in writing; in essence, they stated that in his decisions Mr. Taylor had not been as mindful of the public interests as he had been of the railroads and of the public utilities.

Mr. Taylor's friends have long regarded this denial of office a gross injustice. They pointed out that few appeals were ever taken from his decisions. The fact that during most of Mr. Taylor's tenure of office the price levels were constantly rising and that most of the applications of the utilities for increased rates had, perforce, to be granted, gave a semblance of plausibility to the attitude of the two Senators. The effect of their refusal, (which was possibly grounded in part on the fact that Mr. Taylor had not been politically friendly with their ambitions), was to deny him promotion which he had earned and to deny the state a representative who would have been of great value to it.

THE effect of these various campaigns against commission decisions has been calculated to arraign it in the public mind as operating against the public interest. At nearly every legislative session bills have been introduced to abolish the commission altogether. The better-informed legislators have always sidetracked these bills; nevertheless the commission in Nebraska, as is true in other states, has never been able to make the public understand that it was created for the purposes of establishing and enforcing fair rates and not merely to prevent rate increases. Nearly every candidate for a place on the commission has fanned this flame by picturing the members in office as too friendly towards the corporations —yet every new member who has been elected has changed his mind when he learned by experience how straight a course commissioners must follow.

For the present, commission regulation in Nebraska is functioning efficiently and without fireworks.

An Improper Method of Influencing a Public Service Commission

DURING the course of a rate hearing before the New York Public Service Commission a pamphlet entitled "Double Crossing the Poor" was circulated. It requested opponents of the proposed rates to write protests to Chairman Milo R. Maltbie.

The chairman rebuked the authors of this pamphlet saying that it clearly created the impression that he had put it out and that he was prejudging the case. He said he was getting a flood of letters saying: "I want to join with you in this protest." Dr. Maltbie had ample ground for being indignant about it.

Even if the pamphlet had not created a false impression as to its authorship, it would still have been improperly issued and circulated. The request that opponents write letters of protest to the chairman of the commission as if they were writing to a congressman is highly unethical. Such a request is really in contempt of the commission although the commission may not have the legal power to punish it.

Constituents may without question express their views as to legislative policies by letters to their representatives, but when any kind of a tribunal is set up to ascertain and pronounce judgment on facts in controversies between contending parties, the parties are entitled to the independent judgment of the tribunal uninfluenced by the opinions of persons not appearing before it and not subject to cross-examination.

It is as much in contempt of the commission to write letters of protest against a proposed rate as it would be in contempt of court to write letters to a jury in a civil or criminal case telling the jury what its verdict ought to be.

One of the purposes of establishing public service commissions was to take rate making out of politics. Under the old method of establishing rates by contracts with municipalities and by direct action of the legislatures politics played an important part. In setting up the commissions the people intended to put rate making on a more equitable and scientific basis.

The effort to influence a commission by letters from outside sources is an attempt at regulation in the political way. It should not be encouraged.

The judgment of a commission should not be affected by the number of protests it receives or by the number of ratepayers who might be affected by the decision as compared with the number of stockholders of the company.

Henry C. Spurr

As Seen from the Side-lines

You can, without difficulty, persuade the average citizen of the state of Maine to discuss interminably any one of three subjects.

* *

Naturally, natively, and inherently he possesses those qualities of reticence which caused Calvin Coolidge to be regarded as a chatterbox anytime he said more than a curt "good morning."

* *

But broach to him the subject of Aroostook potatoes, the rock-bound coast (which is the synonym of summer visitors with money to spend) or regulation of public utilities and he can become as optimistically and pridefully loquacious as any giggling blonde after the first shot of bathtub gin in the nestling, semi-gloom of a wayside roadhouse.

* *

And why not? Maine has plenty of potatoes to talk about, and while her northern farmers have, no doubt, contributed with unostentatious generosity to the solicitations of the Red Cross they are wise enough in their day and age to appreciate that western drought has not had the effect of curtailing the demand for home-grown spuds.

* *

She has more seacoast than has been drippingly described by the Fourth-of-July orator whose tongue begins to perspire but not wane at the end of the first forty-five minutes. The day is not far-distant when she, in concert with New Hampshire, Massachusetts, and Vermont, will be the richest vacationland in the entire world. A few more market crashes and the entire country will be looking for cool and shady spots near to home rather than ocean-linering with Babbitarian glee to the dusty, moth-eaten "watering resorts" of Europe.

Now, it is no secret that Maine is in area one of the greatest commonwealths of this nation and that in her water-power resources she is more abundantly and plentifully equipped than any of her sisters. The Insulls are not alone in calculating her power value. Any yokel assembled at the village store in the twilight of a beautiful October evening can discourse exultantly and unendingly upon the subject.

* *

Her state politics have centered for years with more or less regularity upon the subject of regulation. Governor Baxter and Governor Brewster were successively elected to the State House at Augusta as the result of their pronounced and favorable views upon this otherwise dry but very important matter. Governor Gardiner, in fact, told me during the course of a scholarly summary of his pre-election chances that any legislation affecting that subject and, specifically, the water-power element of it, would rarely be adopted by the legislature and approved by a governor unless it provided a referendum for the final and solemn judgment of the people.

* *

It seems only yesterday that the question of exporting Maine's surplus power was submitted to the people themselves for debate, discussion, and judgment and that the people decided to retain their used and unused power within the confines of the state. Its motto, *Dirigo*, could be loosely translated into "I shall hold."

* *

With this background established, if niggardly or superficially in these preceding paragraphs, there should be no occasion for surprise that the state of Maine is about to resolve itself into political turmoil on the subject of regulation.

MAINE has a department of public utilities, established and ordained to regulate the rates and services of all the utilities, from the railroads to the water-power companies. Of that department she is quite jealous. It has been the custom of her governors not to load it down with political hacks and lame ducks but to invest in it the type of men whose independence and sagacity were somewhat epic in the state. By and large, they have commanded the respect and confidence of the people, which is much more flattering and effective than transient applause and mouthy commendation.

* *

MAINE happens to be in the process of reorganizing and consolidating her governmental departments. Governor Gardiner has presented to the legislative session what he is pleased to have known as the "State Administrative Reorganization Code." It is, in effect, a consolidation of all the branches, arms, and torsos of the state government into thirteen departments.

* *

THE department of public utilities happens to be the thirteenth. Each of these departments, it would seem, is to be master of its own destiny, subject to such laws as the legislature has devised and to such regulations as have been sanctioned fom time to time. They are to be self-operating, self-sufficient bodies; that is, with two exceptions.

* *

THESE two exceptions, oddly enough, are the department of highways, which constructs the public thoroughfares over which the summer visitors are expected to ride in comfort and ease, and the department of public utilities. For each of these there would be an executive officer, "an administrative official" designated by the department itself but more or less subject to the governor.

* *

JUDGE Albert J. Stearns, the chairman of the public utilities commission (hereafter to be known as the Department), read through this administrative code with the eye of an expert and came very promptly to the conclusion that this was nothing short of a scheme to set up some subordinate official, responsible more or less to the governor, in charge of the regulatory policies of the great state of Maine.

* *

HE said so. He expressed the belief that the people ought to know it. He no doubt held firmly to the conviction that the people of Maine have had enough experience with the vast subject of regulation not to want their rights farmed out to some person with the humble title of "executive officer" but equipped with all the possibilities of a potential autocrat.

* *

HE warned the people that "if someone had deliberately set out to tie the hands of public regulation" a more absolute and effective manner of accomplishing it could not have been conceived than through the innocent device of "executive officer."

* *

GOVERNOR Gardiner allowed that the judge was in error. His interpretation of the proposed consolidation was a bit far-fetched, the governor insinuated. There was no cause for alarm.

* *

BUT the judge is one of those gentlemen whose long experience has convinced him that the alarm usually is sounded after the horse has been taken from the stable. And he promptly declared that any officer intrusted with the hiring and firing of the employees and experts of the department of public utilities was in a position to mould the regulatory program of the state. If the people want to intrust that enormous power to some minor, obscure officeholder, all well and good; it is their right, the judge allowed. But at least they were going to be warned in advance by him in order that they could make up their minds and come to their decision before the possible harm and damage were achieved.

John T Lambert

What Others Think

What the Decreasing American Birth Rate Means to the Public Utility Industry

DR. Louis Dublin, of the Metropolitan Life Insurance Company, makes an interesting but not entirely cheerful analysis of the 1930 census figures. He finds that our present healthy birth rate figure reflects two conditions which no longer exist:

First; there is the effect of heavy immigration during the last years of the nineteenth century.

Secondly; there is the effect of the prolific character of these immigrants after reaching our shores. This immigration has now fallen off and as a result the immigrant class is no longer able to lead the way in the matter of increasing the country's population. Dr. Dublin makes the startling assertion that our present birth rate would in fact do little more than balance our mortality if it were not for the unusually favorable present age-distribution resulting from these two factors.

This analysis merits serious attention because of the fact that we have reached the end of our years of beneficial population inheritance from this bygone era of propagation. Dr. Dublin asserts that the apparent rate of increase in population in 1920, when corrected for the true birth rate, suffered a 50 per cent loss. In 1928, it suffered over a 75 per cent loss and in 1929 and 1930 the true rate of natural increase approaches closely to zero!

These figures are significant to industry in general and to the public utility industry in particular. Dr. Dublin points out that the result of this trend in our national birth rate must necessarily have a profound effect upon our natural life. He touches upon our present business psychology which, he says, was "created in an atmosphere of great expansion." All or most of our business policies which have so far been successful have been conceived on the assumption of rapid and continuous growth in everything. This conception will have to be revised as to population if Dr. Dublin's predictions are true.

FORMER Interstate Commerce Commissioner Thomas F. Woodlock, commenting upon this analysis, covers the public utility angle fairly well. He says:

> "To take but one example, that of the railroad corporation, it is obvious to the elementary student that the one thing which has enabled its owners and managers to survive is the growth of traffic since the beginning of the century. That it was, more than anything else, which solved their problems for them. And the one new and serious problem that now confronts them is what looks like a permanent flattening out of the important traffic curves. American business men have planned on the theory of the rolling snowball which must grow as it rolls. With a stationary population ahead of them this psychology will have to be modified.
>
> "Dr. Dublin suggests some interesting possibilities. He believes that as growth in population slackens standards of living may improve so that the demand for goods may hold up. Land values will, however, tend to remain fixed; there is no reason to expect either farm or city land to enhance in value with a stationary population. As against a gain in living standards, there is to be set the increasing proportion of old people to be supported by the young; increased and better use of machinery will make greater competition for jobs. With increasing age of the people as a whole is apt to come greater conservatism in thought. There will be an average of about three children to a family, but most families will have less; family ties will tend to be weaker and there will be more divorces."

Of course, this problem, as it affects utilities, is not of pressing importance,

at least for the immediate present. Perhaps it will never materialize. Dr. Dublin concedes the possibility of some unsuspecting factor upsetting his cheerless calculations. But a shrewd utility investor who is building his organization to stand for generations to come would do well to acquaint himself with Dr. Dublin's theories and keep the population factor in the back of his head when he undertakes to plan for the future.

—F. X. W.

THE TREND OF POPULATION. By Dr. Louis I. Dublin. The New York *Times*. January 4, 1931.

POPULATION. By Thomas F. Woodlock. *The Wall Street Journal*. January 13, 1931.

The Significance of the Federal Power Commission's Report in the Light of Recent Developments

THE controversy over the appointment of the new members of the Federal Power Commission has been projected so forcefully into the spotlight of public attention that little notice seems to have been accorded to the work performed by the old commission, composed of the Secretary of War, the Secretary of the Interior, and the Secretary of Agriculture. Nevertheless, it is a fact that this commission has been functioning for a number of years and that during that time it has passed upon some important matters, viewed both from a standpoint of regulation and a standpoint of conservation.

It is to be expected that the work of a commission composed of three already overworked members of the cabinet would naturally fall very heavy upon the shoulders of subordinate officials of the commission. The cabinet officers were able to spare no more than an hour or so a month from their own departmental duties to attend joint meetings. As a result, they could do little more than review and pass upon summarized findings of such subordinates. Among these subordinates were Messrs. Benner, Russell, and King, whose dismissal by President Hoover's appointees to the new commission caused such a furor in congressional circles during the last month.

It was largely to obviate this regulation by subordinates that the Couzens Bill reorganizing the commission on a full-time basis was passed. But just the same, the old commission, such as it was, passed on some matters that should have an important bearing upon the future policies of the commission. Most of this work was reviewed in the Tenth Annual Report of the commission, which set forth its activities up to the end of the fiscal year of 1930.

THIS report has been ably summarized by a statement of Secretary of the Interior Ray Lyman Wilbur, former chairman of the commission, which was made public on November 27, 1930. This summary reads in part as follows:

> "Control over water-power developments is declared to be primarily a responsibility of the individual states in the annual report of the Federal Power Commission made public today by Ray Lyman Wilbur, Secretary of the Interior and acting chairman of the commission. The report cites complaints made by state authorities that the government in some instances has been inclined to encroach upon the rightful field of state activity to such extent that confusing duplication of authority occurs. In this connection the report points out that 'clearly the government has the principal obligation in safeguarding the interests of navigation and the Federal properties as may be affected by water-power projects, but in other respects the control of these developments is largely a matter of state interest. Since this situation involves a considerable degree of dual authority, there are present the elements of possible conflict and confusion which might seriously impede desirable developments unless the state and Federal agencies find a basis whereby each may properly

supplement and not duplicate the other.'

"The report reveals that the activities of the commission to date have mainly concerned the western states since very few of the 449 projects licensed so far are east of the Mississippi river. According to the report 'they are scattered through many sections, but the geographic distribution shows a great concentration in the western states. California alone accounts for more than a third of the 449 projects while the three Pacific Coast states together have approximately half of the total. Less than 10 per cent of the projects are found east of the Mississippi river. The total capacity of all the licensed plants which have been completed and placed in service now amounts to 2,608,868 horsepower. This capacity is equivalent to about 24 per cent of all the hydro capacity and slightly less than 6 per cent of the total generating capacity in public utility service throughout the country. It is of interest to note that about 80 per cent of all the capacity operating under Federal Power Commission license is confined to four states: Alabama, California, Maryland, and New York. The Maryland apportionment is accounted for entirely by the single plant at Conowingo, while in the case of New York all but 8,100 horsepower consists of the installation at the Niagara Falls station. The installation in a dozen states comprises 97 per cent of the total and in 27 states there are no plants whatever operating under the authorization of the act. It is apparent from these figures that the effect of the legislation so far has been of somewhat sectional rather than broad national significance.'"

SECRETARY Wilbur then proceeds to tell us that the end of the year finds "the primary business of the commission in a very satisfactory condition." He tells us that during the past year the docket has been practically cleared of applications for large projects contemplating early construction operations. It might be interesting to observe here that this haste on the part of the old Federal Power Commission in permitting a number of applications to be rushed through as it neared the end of its official life has been the cause of considerable criticism by the Scripps-Howard and Hearst papers, which have vigorously scored the acts of the "lame-duck" commission as attempts to scuttle the effectiveness of the Federal Water Power Act. One Scripps-Howard paper stated:

"The Power Commission's annual report is defiant notice that the legal guardians of the law are arrayed against the law."

Senator Norris, of Nebraska, has observed that much of the regulatory work reported as accomplished in the annual report was achieved at the expense of thorough regulation. True, the dockets were cleared, but how? By granting applications without making necessary findings of value or requiring proper accounting to safeguard public interest. The Senator from Nebraska is quoted by the *United States Daily*, on November 29th, as saying:

"I think it is a step toward the annihilation of the Federal Water Power Act. If we permit the power companies to build dams and not make an accounting as to cost as a basis for rates and possible recapture, we have made it impossible for the government effectively either to recapture at the end of the period or to give the people during the period a reasonable rate for electricity.

"It is to comply with the wish of the power trust. It is practically to take the Federal Government out of the power field and turn it over to the states."

SECRETARY Wilbur's summary of the commission's work states that recent authorizations will permit the immediate construction of projects costing more than $70,000,000. An interesting statement is made to the effect that even in regions of abundant water power resources, the steam electric plant is assuming a position of rapidly increasing importance and is demonstrating its capacity to compete on even terms with hydro-power. Statistics for 1929 show for the first time in ten years a failure of hydro-power to gain in output. During the same period fuel plants increased nearly ten billion kilowatt hours.

Preliminary figures for the first nine months of 1930 show an electric production about equal to 1929, notwithstanding the hard times. Hydro-power dropped sharply, however. The reason for this was laid jointly upon last summer's drought and the increasing effectiveness of fuel plants.

THUS IT CAME TO PASS THAT DELILAH STARTED BUYING HAIR TONIC FOR SAMSON

SECRETARY Wilbur describes the extent of the commission's work as follows:

"Among the new projects under construction the most important, according to the commission, are 'the Bagnell dam on the Osage river in Missouri, the Safe Harbor Dam on the Susquehanna river in Pennsylvania, the Rock Island Dam on the Columbia river near Wenatchee, Washington, the Ariel Dam on Lewis river, also in Washington, and the Flathead Lake project in Montana. Each of these projects includes unusual features and is requiring large outlays for labor and materials. The

last three projects mentioned are all within the Columbia river basin. This mighty river with its immense discharge and comparatively steep descent to the ocean furnishes one of the country's premier water-power possibilities. . . .

"The report outlines at some length the policy adopted by the commission for disposing of the many applications in the Colorado river basin on which action has been suspended for a number of years pending legislative action in respect to the Boulder Canyon project. Some difficulty has been encountered in formulating a definite program satisfactory to the several states concerned, but, according to the report, 'applications qualifying for favorable action are now in process of authorization and those which appear out of harmony with the present situation are being held for rejection. The latter includes not only those in physical conflict with Boulder Canyon, but also the proposed developments which are deprived of a possible market for their output for some years in the future on account of the large amount of power to be available from the plant at Hoover Dam. The cancellation of these applications will clear many long-standing cases from the commissioner's docket and reduce the proposed installation total by some 15,000,000 horsepower.'"

The record of work accomplished by the commission, as shown by the number of cases disposed of, was as follows according to the summary:

"The report states that 1,104 applications have been filed during the ten years since the passage of the act and that the number and character of those filed during the past year 'followed quite closely those of previous years, the proportion of projects of a major type being slightly less than in the preceding fiscal year with a further recession in the total capacity of new applications following the trend which has been in evidence ever since 1926.' A total of 133 cases were disposed of during the year as compared with 68 in the preceding year. Also it is stated that, as a result of measures adopted during the year for clearing up the delayed cost accounting work on completed projects, 'the status of the activity has been much improved.' Receipts from license fees aggregated nearly half-a-million dollars, representing an increase of nearly 40 per cent over the preceding year."

SECRETARY Wilbur observed that for the country as a whole the per capita demand for electricity had more than doubled during the last decade, increasing from 391 kilowatt hours in 1920 to 800 kilowatt hours in 1930. He notes also that the highest per capita consumption occurs in regions served by hydroelectric plants which would indicate, contrary to the opinions expressed by some utility writers, that the availability of low cost sources of water power is an important factor in promoting liberal use of current.

The entire report is overshadowed, however, in the minds of well-informed Washington observers by the Clarion River Power Company suit, in the supreme court of the District of Columbia, to restrain the Federal Power Commission from making a record of the claimed investment of the company. The suit promises to test the constitutionality of the Federal Water Power Act of 1920, under which the commission purports to function, and concerning which there has always been grave doubts in the minds of our foremost constitutional lawyers.

If the Clarion Case is decided contrary to the government, the Federal Power Commission, whose powers are already limited far beyond the popular impression, will have its jurisdiction so stripped as to leave but a remnant of control over the companies which it now purports to regulate. The case promises to be another Smyth *v.* Ames, another O'Fallon decision, another landmark in the development of regulatory law. Anything the Federal Power Commission has done or will do can be valid only to the extent that it conforms to the rulings which will probably be handed down in this pending litigation.

—F. X. W.

TENTH ANNUAL REPORT OF THE FEDERAL POWER COMMISSION: 1930.

¶ "THE *emergence of the 'power trust' as an issue in next year's campaign can be counted on as confidently as if the campaign were already under way.*"

—MARK SULLIVAN

A Proposal to Eliminate Valuation as a Basis of Utility Rate Making

In a recent address before the Academy of Political Science, Dr. John H. Gray, of George Washington University, clearly analyzed and vividly pointed out the more glaring defects in the present status of all endeavors on the part of the state to regulate public utilities.

He pointed out that in the present age of large, fixed, specialized capital, serving world markets, and resting on credit, the ancient economic doctrine of competition, as formulated by Ricardo more than a century ago, (and which still dominates the popular, the legislative, and the judicial mind), has been deserted by business practice; that efforts to compel competition has proved futile; that the antitrust acts, state and Federal, have not enforced competition, prevented combination, or protected the consumer; that in public utilities there is no standard of fair prices for a legislature or commission to use as a measuring rod of what is fair, for significant cost studies as to general costs in those industries or in different classes of services have never been made; that the distinction between public and private utilities and other industries is simply a legal fiction with no economic basis; that the Supreme Court made all regulation impossible when in Smyth *v.* Ames, 1898, it said that the company is entitled to "a fair return on the fair value of the property"; that the phrase fair value has never been and cannot be defined, for it is neither a legal nor an economic, but an ethical phrase; that the value of a utility cannot be determined until the rates are known; that value applied to public service utilities has no well defined meaning as it has in economics, for value implies and requires competition, a market, and free contract, all of which are lacking from the utility field; that any attempt to use fair value as a rate base means that the state abdicates and makes the utilities judge in their own cases.

All those criticisms directed against public utility regulation as it is practiced today are succinctly and clearly stated by Dr. Gray, and with them the many of the leading public utility economists of the nation agree. But unfortunately some of Dr. Gray's solutions of the problem all too evidently indicate that to tear down or criticize is much easier than to build or construct.

That holding companies must be controlled through compulsory national incorporation and through a unification of assets owned directly by one corporation is surely a wise remedy and a constructive step that would go far toward eliminating a part of the confusion now involved in regulation. Also, that the corporate structure of public utilities should be appreciably simplified and the kinds of securities strictly limited would make the problem of regulation much less complex is another suggestion of fundamental merit. But when Dr. Gray proposes that the state should abandon all idea of determining the general level of rates, and concern itself, so far as rates are concerned, with discrimination only, and maintains that the only safe method of dealing with monopoly profits is not by fixing rates but by direct profits taxes in every field of monopoly, he really approves or indirectly accepts valuation as a method of regulating the rates of public utilities, or he apparently unconsciously advocates the very scheme that he so bitterly condemned throughout his lecture.

For how could the state concern itself, so far as rates are concerned, with discrimination only, if it did not have in mind some fundamental concept by means of which to determine discrimination?

Clearly, discrimination would not be evident until unreasonable rates were

ONE STEP LEADS TO ANOTHER

charged by a utility company. But what would constitute unreasonable rates?

The answer would be a rate that yields what is considered an excess return on the fair value of the capital investment of the utility. And how could monopoly profits of public utilities be justly and equitably taxed without first making a fair appraisal of the value of the property from which the profits come?

Could excess profits of public utility monopolies be ascertained without first determining a reasonable rate of return on capital investment?

And how could a fair yield on public utility investment be obtained without a recognition of the actual value of the investment as a basis of making rates?

I do not mean to say that Dr. Gray has not justly criticized valuation as a method of regulating the rates of public utilities, but I do maintain that his proposal to eliminate valuation as a basis of rate making by means of substituting therefor commission control of rate discrimination and direct profits taxes in every field of monopoly

is circuitous reasoning, for both of those schemes would ultimately revert to some method of valuation; or I hold that he has not extricated himself from circuitous reasoning any more than the classical economists have been able to free themselves from the same fallacy in their definitions of exchange or objective value.

—R. S. FULTON,
Department of Economics, College of the City of New York.

THE STATE ABDICATES; UTILITIES GOVERN THEMSELVES. An address by Dr. John H. Gray before the Academy of Political Science. 1930.

Publications Received

AMBER TO AMPERES. By Ernest Greenwood. New York; Harper & Brothers. 332 pages. Price $4.00.

CENTRAL ELECTRIC LIGHT AND POWER STATIONS—1927. Washington, D. C.; U. S. Department of Commerce; Bureau of Census. 92 pages. 1930.

CONSERVATION OF NATURAL RESOURCES. By Van Hise and Havemeyer. New York; The Macmillan Co. Price $4.00.

This somewhat comprehensive work on conservation treats briefly of the growth of the conservation movement from the activities of President Roosevelt to the present day work of the Federal Power Commission. They conclude that neither the Federal Power Commission nor the state commission is controlling the development of power sites by power companies from the standpoint of either rate regulation or resource conservation as effectively as could be desired.

INDUSTRIAL AND COMMERCIAL GERMANY. The Hamburg-American Line. 195 pages. 1930 Edition.

NATIONAL ELECTRIC LIGHT ASSOCIATION PROCEEDINGS. New York; National Electric Light Asociation. 1444 pages. 1930.

NATIONAL ASPECTS OF WATER POWER DEVELOPMENT. By the National Water Power Policies Committee. Washington; U. S. Chamber of Commerce; 179 pages.

QUAINT ELECTRIC RATES. By Morris Llewellyn Cooke. New York City; National Municipal Review; 7 pages.

RELIEF FROM PAVING BURDENS. New York; *American Electric Railway Association Bulletin No. 335.* 256 pages.

STATISTICAL SUPPLEMENT TO THE "ELECTRICAL LIGHT AND POWER INDUSTRY IN THE UNITED STATES." New York; National Electric Light Association; 31 pages.

Other Articles Worth Reading

ALADDIN'S LAMP. By George W. Gray. *Atlantic Monthly.* December, 1930.

COÖRDINATION OF TAXICAB AND RAPID TRANSIT SERVICE AS IT IS HANDLED BY THE KANSAS CITY PUBLIC SERVICE COMPANY. *The Railwayan.* December, 1930.

FEDERAL REGULATION OF AIRPLANE COMMON CARRIERS. By Paul T. David. *The Journal of Land & Public Utility Economics;* pages 359–371. November, 1930.

GERMAN CORPORATIONS OWNING AND MANAGING ELECTRIC UNDERTAKINGS. By Jurgen Brandt. *The Journal of Land & Public Utility Economics;* pages 409–414. November, 1930.

MUNICIPAL OWNERSHIP AND THE CHANGING TECHNOLOGY OF THE ELECTRIC INDUSTRY: TRENDS IN PRIME MOVER CAPACITY. By Paul Jerome Raver. *The Journal of Land & Public Utility Economics;* pages 386–398. November, 1930.

NEW YORK STATE STUDIES REGULATION. By John D. Sumner. *The Journal of Land & Public Utility Economics;* pages 376–385. November, 1930.

TAKING STOCK OF REGULATION IN THE STATE OF NEW YORK. By Morris Llewellyn Cooke. New Haven, Conn., *Yale Law Journal;* pages 17–33. November, 1930.

THE CONTROL OF PUBLIC UTILITY CORPORATIONS. By Floyd L. Carlisle. *N. E. L. A. Bulletin;* pages 679–681. November, 1930.

THE POWER FIGHT GOES ON. By Ruth Finney. *The Nation.* December 24, 1930.

The March of Events

California

Mayor Favors Unification of San Francisco Lines

MAYOR Angelo J. Rossi, of San Francisco, in his inaugural speech pledged himself to unification of street railway systems and maintenance of the 5-cent fare. He also stated his purpose to insist that the manager of the municipal railways and the manager of the water department be free from interference, and that employees of these departments be given the same latitude for advancement that would exist if they were privately owned.

The mayor's remarks, according to the San Francisco *Chronicle,* brought the statement from John P. Hannan, chief accountant of the board of works, that unification can only be achieved successfully by the Market Street Railway, which is privately owned, acquiring the municipal lines. Then M. M. O'Shaughnessy, city engineer, stated that unification is possible only by a 7-cent fare or a cut in wages. The *Chronicle* goes on to say:

"Hannan's idea that the Market Street Railway should acquire the municipal lines, is based, he said, on long contact with the finances of the municipal road and his close touch with the administrative affairs of the city-owned lines.

"Repeated reports showing that the municipal lines were 'in the red' while the Market Street lines were paying a profit; the consistent refusal of voters to sanction bond issues at the polls for extensions in municipal service; the action of the electorate last November in extending Market Street Railway franchises for twenty years, Hannan said, all cut a figure in his conclusions that there was only one successful way in which unification could be accomplished."

Commission Power Over Rate Cutting Is Challenged

THE Pacific Gas and Electric Company on January 17th asked dismissal of all proceedings arising from the rate cutting war between it and the Modesto Irrigation District. The utility contended that complaints presented by Oakland, Stockton, and Modesto asking that rates over the public utility system be lowered on a par with those in the Modesto region, where the company is in competition with the municipally owned irrigation district, were insufficient to constitute a cause of action. The company declared that the commission is without jurisdiction to hear the complaints on the ground that it has no authority over municipally owned utilities.

The company also filed an amended answer to the complaint of the city of Oakland. It set forth that the company's rates were lowered in Modesto to meet rates established by the irrigation district in the latter's "aggressive and unfair campaign of competition" for electric consumers and to forestall the district from further taking the utility's customers.

Connecticut

Wider Commission Powers Are Urged by Governor

GOVERNOR Cross, in his inaugural address to the legislature, recommended an expansion of the jurisdiction of the public utilities commission to embrace control of security issues by utilities, supervision of the accounts of the companies, and to enable the commission to institute proceedings involving rates and service on its own motion.

Professor Loses on Appeal in Ouster Proceedings

CHIEF Justice William M. Maltbie of the Connecticut Supreme Court, according to a report in the New York *Herald Tribune,* has reversed the decision of the superior court favoring Professor Albert Levitt in his battle to compel the attorney general to start proceedings for the removal of the public utility commissioners. The *Herald Tribune* reports:

"Dr. Levitt began his attack by invoking two obsolescent state statutes to compel the public utilities commission to take action against the railroads for failure to remove grade crossings throughout the state. He obtained signatures of 100 electors to a petition to the attorney general to begin ouster proceedings against the commission for neglect of duty, but Attorney General Benjamin Alling denied the petition, arguing that the grade crossing law was not mandatory, but that the commission should exercise its discretion in the matter.

"But Judge Jennings, in Hartford County Superior Court, granted Mr. Levitt a writ of mandamus to compel the attorney general to begin the ouster proceedings. Later Superior Court Judge Allyn L. Brown refused to grant the attorney general a rehearing on the mandamus order, and the state supreme court of errors upheld Dr. Levitt on the attorney general's first appeal.

"Justice Maltbie's decision probably will send the case before the supreme court again. Mr. Alling has held that the language of the law makes it unnecessary for him to proceed in any case unless he feels that circumstances warrant his action."

District of Columbia

Added Powers for Commission Are Opposed

At a hearing before the Senate District Committee on January 20th opposition developed against a bill to enlarge the powers of the public utilities commission. Representatives of the local traction companies and the Washington Gas Light Company, according to the Washington *Star*, contended the bill made the powers of the commission too broad. Says the *Star:*

"They argued that the bill would have the effect of enabling the commission to exercise managerial instead of regulatory powers, and said that the theory of utility regulation does not contemplate that commissions should manage the properties.

"The purposes of the bill were explained and defended by Commissioner Hartman and Assistant Corporation Counsel Roberts.

"Another section of the bill is intended to give the commission power to require all utilities, including taxicabs, to establish their capacity and responsibility for complying with obligations arising from their operation as utilities. Mr. Roberts explained the bill contemplated only financial responsibility and would not permit the commission to limit the number of cabs.

"Bernard L. Henning, 907 E street, southeast, issued a statement today objecting to the taxicab features of this bill. He said there is a bill on the House calendar now, which passed the Senate at the last session, containing only a requirement that cabs post regular bond or insurance. He said this is all the taxicab legislation that Congress should consider, and this, he said, should be amended to fix a definite amount of bond for each car."

One section of the bill is designed to empower the commission to inquire into the relations between the local management of local public utilities and foreign holding companies which own a controlling interest in these utilities. Another section provides that the cost of all litigation in court incident to a controversy between the commission and utilities shall be borne by the corporations. This was objected to as it would be passed on to the utility customers.

Commission Seeks Modification of Consent Decree

The public utilities commission has directed Corporation Counsel W. W. Bride to seek modification by the court of the consent decree under which the rates of the Potomac Electric Power Company have been fixed since 1925. The company has been allowed a return of 7½ per cent, with a provision that in case more than that is earned in any year, one half of the surplus shall be applied toward reductions in the following year. The commission now is seeking to reduce this to 6½ per cent with larger amounts in excess earnings applied to rate reductions.

Cost of Capitol Track Relocation Stirs Objections

The street railway companies in Washington have raised objections to meeting the cost of relocating car tracks between the Capitol and Union station, but in order not to delay plans for the improvement of the city they have agreed to do the work under protest, in the hope that Congress later will adjust their claims.

A brief signed by John H. Hanna, president of the Capital Traction Company, and William F. Ham, president of the Washington Railway & Electric Company, filed with the Commission on Enlarging the Capitol Grounds, points out that when Congress ordered the rebuilding of the south end of Highway Bridge recently to tie in with the

George Washington Memorial Boulevard, it provided that no part of the cost of changing the bridge should be assessed against the District government or the street railway company using the bridge. It is contended that the enlargement of the Capitol grounds is a similar Federal project and it is discriminatory to assess the cost against the companies.

Georgia

Probe of Rate Cut Is Aired in Court

THE Crisp county power rate case was submitted to the state supreme court on January 23rd after arguments in behalf of the Georgia Power Company that the public service commission had prejudged it in the original order, and argument by the commission that the language of the order merely put the power company on notice as to what questions it must answer.

The commission had ordered the company to show cause why lower rates should not be applied generally in the power company's territory after it had reduced rates in Cordele, where Crisp county had installed its own power plant and had made rates lower than those of the power company. The utility obtained an injunction against hearings on the commission's order. They contended that the commission in terming the new rates "voluntarily" and in asserting that under them discrimination was "inevitable," had prejudged the case.

Chairman James A. Perry urged that the language to which the power company objected was only in the preamble of the order, and that the real question in the case was presented in the body of the rule directing the power company to show cause why the lower rates should not apply generally. S. J. Smith, Jr., special counsel, argued that the power company had nothing to go into court with, citing decisions to support a contention that it had nothing of which to complain since no order was actually in force.

The point was argued, in behalf of the company, that the commission had authority only to prescribe maximum rates and not minimum charges, and rulings were cited to show that competitive rates were not voluntary. The rule of the commission, it was said, threatened the whole ability of the power company to meet competition,

Illinois

Proposal of Local Utility Control Is Opposed

THE Mattoon Association of Commerce has called upon the city attorney to desist from his efforts to bring about a special election to determine whether the city of Mattoon should take over the regulation of public utilities from the Illinois Commerce Commission. This election had been suggested under a law enacted in 1921 which permits a municipality to take such regulatory power from the commerce commission and vest it in the city council if the voters approve, after 20 per cent have petitioned for a poll.

The resolution of the association, says the Springfield *State-Journal*, expressed the belief that such a move would not reduce public utility rates but would involve the city and the Central Illinois Public Service Corporation in costly litigation. The proposal for taking over regulation was the outgrowth of a plan of the utility to curtail service in Mattoon and to increase rates in other communities.

Iowa

Extension of Commission Jurisdiction Is Recommended

THE board of railroad commissioners in the state of Iowa has jurisdiction only over railroads, motor carriers, and high power transmission lines. It does not regulate other public utilities as they are regulated in many states. Governor Turner, however, has now recommended to the legislature that the jurisdiction of the commission be extended to the regulation of all public utilities operating in the state.

Kansas

Telephone Rate Probe Is Ordered

THE Kansas commission on January 24th ordered a general investigation of telephone rates throughout the state, according to the Kansas City *Journal-Post*. Notice was sent to the Southwestern Bell and 349 other companies operating in the state that a hearing would be begun in Topeka March 2nd. All the companies must bring in detailed statements of their revenues and expenses for 1930.

This investigation is said to be an outgrowth of complaints that the companies have not reduced their rates since the era of war prices, despite the fact that materials and labor have come down in price. Governor Reed, before retiring from office, expressed the opinion that there should be a change in rates, and Governor Woodring in his message to the legislature recommended some action looking to lower telephone rates.

A New Utility Tax Bill

A BILL recently introduced in the Kansas legislature by Senator Warren of that state calls for a special tax on all privately owned utilities to pay the expenses of the public service commission. The tax on telephone companies would be 10 cents per phone. The commission will be permitted to use such funds to build up cases against utilities in rate proceedings, or in other complaints against them. Kansas utilities, if this bill is passed, will be in about the same position as a man whose wife sues him for divorce or separation, they will have to foot the bill for both sides of the case.

Louisiana

Governor Holds Up Funds for Commissioners' Salaries

A SUIT has been instituted by Chairman Francis Williams of the public service commission to compel Governor H. P. Long, a former member of the commission, to sign a note for $10,000 to provide funds with which to pay the salaries of the commissioners, according to the *Traffic World*.

The legislature increased the salaries of the commissioners from $3,000 to $4,800 annually and directed the state board of liquidation to borrow the funds with which to pay the increase. The board took the proper steps to carry out the instructions of the legislature and designated the governor as a member to sign the note for placement with the fiscal agency banks. The governor, politically opposed to the commission majority, has not signed the note and the funds have not been forthcoming.

The district court at Baton Rouge issued an order directing Governor Long either to meet the demand of the public service commission or show cause why a writ of mandamus should not be issued.

Massachusetts

Question of Validity of Telephone Operations Is Injected into Rate Case

WYCLIFFE C. Marshall, attorney for Central Labor Union, at the opening of the investigation into telephone rates, challenged the right of the New England Telephone & Telegraph Company of New York and American Telephone and Telegraph Company to do business in the state. He said that the fundamental question arises, "does a foreign body incorporated only as an electric telegraph company under a New York statute have the legal power to acquire and absorb independent Massachusetts telephone companies and thereby create and operate a telephone monopoly in Massachusetts without the approval of the great and general court of Massachusetts,—the creator of these independent Massachusetts telephone corporations?" He then inquired whether "telephone rates filed and charges levied by such a corporation" are val-

id in Massachusetts. He stated his intention to prove the answer is "no."

The American Telephone and Telegraph Company filed a letter with the commission stating that inasmuch as it did not do business in Massachusetts and had no schedule of its rates on file with the commission, it did not consider itself a party to the rate case. On this point Mr. Marshall stated that the American Telephone and Telegraph Company of Massachusetts is listed under assets of the New York corporation of the same name among "investments in inactive corporations." Yet some company, he added, is handling the toll business in Massachusetts, and he pointed out that the New York corporation last year paid a tax to Massachusetts of over $772,000.

Mr. Marshall made a motion that the department declare null and void all rates and charges on file covering service by the New England Telephone Company, the New York corporation, and order the various Massachusetts subsidiary corporations to file rates covering telephone service in Massachusetts.

All these arguments respecting the alleged illegality of operations of New England Telephone Company, according to newspaper reports, were termed "the bunk" by vice president Charles S. Pierce. Mr. Pierce stated that all of the points raised by Mr. Marshall are legal ones for the courts to decide. He is quoted as saying further:

"I assumed we were here to discuss rates. There has been nothing concealed by the company since its organization in 1893. It has grown to a company with property valued at $303,000,000, of which 75 per cent is in Massachusetts. Massachusetts has known all about it, regulated it, and taxed it. We pay taxes of approximately $3,500,000 a year to this state. There is an answer to everything that Mr. Marshall has said. We are not disturbed by it. But we do think that if his argument is to be seriously presented, it should go to the courts."

Profits Are Not Impressive When Rates Are Low

CONSUMERS of New Bedford complaining against rates of the New Bedford Gas and Edison Light Company, according to newspaper reports, did not greatly impress Chairman Henry C. Attwill, of the state department of public utilities, of the need for immediate and drastic action on their complaint in view of the fact that their rate at 45 kilowatt-hour consumption would be 6 cents per kilowatt hour. Counsel for the consumers argued that large dividends had been paid by the company, but Chairman Attwill is quoted as saying that if the rate was not excessive, there should be no objection if the company makes money. He said that in rate making there is involved a whole lot more than finding out whether a company is making money and then chopping down the rate.

The complaint has been made that the Associated Gas interests have been drawing large sums of money from the local company, which they now control, to other subsidiary companies. Objection is made to payments by the local company for management services. The hearings were adjourned to March 1st so as to obtain the annual report of the company for 1930, which is to be made a part of the record.

Missouri

Changes in Commission Law Are Advocated

UNDER a bill introduced in the legislature the Missouri commission would be required to make a valuation of each public utility in the state to determine the fair value for rate-making purposes at least once every seven years.

Another proposed law would authorize the commission to examine into any charge made against the public utility by a holding company for supervision, services, or managerial or financial assistance. The bill would also authorize the commission to inquire into the reasonableness of any contract entered into between a public utility and any company having an interest in or control over the utility.

Still another proposal is to require that the commission in valuing a public utility for rate-making purposes shall be controlled chiefly by the original cost of the property and the cost of its reproduction new less depreciation. The bill does not, however, describe the relative weight to be given the two valuation theories in fixing a rate base. What effect this law would have is not made plain since these are now the chief elements considered by the commissions.

City Regulation of Utilities Is Proposed

THE city council of Kansas City would be empowered to fix rates and regulate gas, street car, electric, telephone, and other utili-

ties there, under a bill introduced in the legislature, according to the Kansas City *Star*, which adds:

"No rates, under the proposed law, could be changed oftener than once every two years. A committee or commission under the municipal authority of the city would be empowered to investigate all facts concerning utilities in connection with rate making and report them to the council. The commission would be empowered to subpoena witnesses and enforce the production of books and papers."

New Investment Looms Large in Rate Case

HEARINGS on the rates of the Union Electric Light & Power Company of St. Louis were resumed before the commission on January 18th. The city of St. Louis has been seeking a reduction of approximately 25 per cent.

The company has claimed an actual rate base valuation on original cost of at least $83,529,225.14 made up as follows: Original cost of property and plant, $60,829,225.14; working capital, $5,200,000; cost of organization and consolidations, $5,000,000; going value, $12,500,000.

Taking into consideration the cost of reproduction, the company has calculated its rate base should not be less than $90,000,000. In addition the company has urged that since rates are to be fixed for the future there should be included in the rate base the cost of a new hydroelectric plant which is expected to go into service some time this year. This would add about $33,000,000 to the value, and other extensions and improvements would add another $10,000,000.

Evidence was introduced by experts for the city to show that $40,000,000 is a fair rate base for that part of the property serving St. Louis, although the total property valuation was given in a commission audit at $54,636,410.

The commission, on January 27th, overruled a motion by the company that an appraisal and inventory of its property be ordered, and that no reduction be ordered before a valuation has been established on that basis.

Nebraska

A Month's Free Telephone Service Prize Is Forbidden by Law

R. C. DUTCHER, who owns and manages the telephone plant at Pierce, Nebraska, thought up a novel plan for stimulating prompt payment of bills by his subscribers who were becoming more and more tardy in the mere matter of settling accounts. Mr. Dutcher's plan was to offer a month's service free to the lucky subscriber whose name would be drawn each month from a list of paid-up patrons. The purpose of the scheme, of course, was to induce nearly all subscribers to qualify themselves for the drawing by paying their bills.

Chairman Randall of the Nebraska commission did not think much of the plan, however. He pointed out to Mr. Dutcher that it would be a direct violation of the law prohibiting lotteries and would subject him to criminal prosecution. The chairman also pointed out that Nebraska's Anti-discrimination Law prohibited the rendition of free service by a utility company. Mr. Dutcher was finally reminded that the commission is ready at all times to assist in the prompt collection of delinquent accounts by public service companies.

New York

Hearings Are Ended in Brooklyn Union Gas Case

THE completion of evidence in the Brooklyn Union Gas Company rate proceedings came on January 22nd. Chairman Milo R. Maltbie, however, said that the case would be left open to allow the commission to receive additional information it might require. Extended hearings have been held by the commission concerning the company's proposal of a rate schedule to include an initial monthly charge of 95 cents for the first 200 cubic feet of gas used. These proceedings were on a rehearing.

A witness for the city testified concerning the cost of gas production but on cross-examination he admitted that the operating costs did not include taxes or uncollectible bills, nor

did he take into account return on investment.

There was more testimony concerning the "poor people." It was said that the customer of moderate means does not go to Florida in the winter but remains at home and becomes a steadier consumer of gas.

Electric Rate Hearings End

THE New York Public Service Commission on January 26th brought to a close the public hearings on the rate schedules of the electric utilities in New York city. Hearings were begun in August, 1930.

At the conclusion of the hearings a brief was submitted by the community councils of the city of New York, strenuously opposing the proposed rate schedules and offering a substitute schedule, the main features of which are a minimum bill of 60 cents a month plus an energy charge as follows: 6 cents a kilowatt hour for the first 30 kilowatt hours consumed a month; 5 cents for the next 20 kilowatt hours; 3 cents for the next 50 kilowatt hours; and 2 cents a kilowatt hour for all energy consumed in excess of 100 kilowatt hours. The companies had proposed a reduction from 7 cents to 5 cents per kilowatt hour with a fixed charge of 60 cents a month. The companies under the new rates, it is stated, would sustain a reduction in revenues of $6,000,000 a year, but because of the promotional features, additional business would be gained.

The city has opposed a service charge and has insisted upon a reduction for all classes of consumers regardless of promotional features. It wants what it terms "uniform and simple rate schedules."

Opposition has been strenuously offered against the new rate schedules in behalf of unregulated submetering concerns, who fear that their business will be endangered because of the competition by the regulated utilities under the lower rate schedules.

Ohio

Cities Protest Valuation

THE tentative valuation of $104,000,000 fixed as of 1925 by the commission upon the properties of the Ohio Bell Telephone Company brought protests from the company and all the cities interested. Legal advisers of the cities after a meeting on January 21st announced their intention to contest the valuation. Solicitors of the municipalities met with Attorney General Gilbert Bettman, who is leading the opposition to the telephone company.

Notwithstanding this protest against the valuation, it was decided that the hearing of the rate case could progress before the commission. The next step is the introduction of reports of expenses and receipts so that the present net income and profit on the investment can be determined.

Oregon

New Governor Would Abolish Regulatory Commission

GOVERNOR Meier, in his message to the legislature, declared for the abolition of the public service commission and the creation of a department of public utilities to consist of a single commissioner appointed by and removable at the discretion of the governor. Concerning this officer, he said:

"In addition to being vested with powers which the public service commission may now exercise, such commissioner should be charged by law with the specific duty of representing the public in all controversies with utilities affecting rates, valuations, and service, and his chief duty should be to protect the public on any and all occasions to the end that the people may obtain adequate service at fair rates.

"Such commissioner should also have supervision over the issuance of all stocks, bonds, securities, and obligations by utility companies, all consolidations, mergers, purchases, and sales of property by them, except in so far as jurisdiction concerning such matters may be vested in a hydroelectric commission concerning projects constructed or operated under license issued by such commission."

The governor also recommended that legislation be enacted extending the home rule principle to municipalities so that they might "enjoy, if they so elect, the right to contract by franchise, or otherwise, with any public utilities as to rates, service, and facilities within their respective boundaries."

Recommendation was also made that the laws relating to certificates of convenience

and necessity which result in barring competition be repealed. He also recommended legislation limiting and circumscribing the right of one public service corporation to contract with another corporation for service, or the use of property, or the purchase of property.

Pennsylvania

Governor Renews His Attack on Public Utilities

GOVERNOR Pinchot, upon assuming office, resumed his attack upon the public utilities. In the words of the Philadelphia *Evening Public Ledger*, the governor "made it plain that there has been no mitigation of his distaste for the public utilities of the state."

Governor Pinchot has declared his intention to abolish the public service commission and to substitute an elective "fair rate board." The governor's attack, says the New York *Times*, is interpreted widely as a bid for the presidential nomination in 1932.

Apparently the governor ran up against opposition in the Senate, where a bill introduced for the purpose of investigating the commission was rejected by the Senate judiciary committee. The Philadelphia *Record* states that this rejection was on the ground that since the administration controls the House it would put the investigation in the hands of the governor by a six-to-three vote. Another probe bill has been pending in the House.

Tennessee

Taxation of Busses Is Asked

THE Nashville, Chattanooga & St. Louis Railway, according to the New York *Times*, has been instrumental in having introduced into the legislature a series of drastic bills to tax and regulate the bus industry in the state. The railroad, according to this newspaper, has declared its intention to wage a battle against discriminatory taxes and if necessary take hundreds of tax suits from every one of the thirty three counties it serves to the United States Supreme Court before a dollar would be paid on them.

The railroad company is paying for right of way maintenance which goes to the bus company free, it is said, and of state taxes 31 cents out of every dollar of gross income, whereas the total of gasoline and other minor taxes the bus companies pay amount to only 6 per cent.

Objection is also made to discrimination in the way of building overhead bridges and underpasses. Under present laws the railroad pays half the expense of these grade changes, whereas the busses, which use them after they are built, do not pay any of the expense, it is charged by the railroad spokesmen.

The bus operators are apparently organizing to meet the attacks of the railroad. Their spokesmen have pointed out that other forms of transportation, including the railroads, received subsidies in their younger days. The railroad advocates answer that the bus companies are being subsidized by the use of public roads without paying for them, and they are not a struggling industry without income but are paying big dividends.

West Virginia

Senate Favors Study of Public Service Commission

A RESOLUTION has been passed by the Senate requesting the public service commission for data and records relating to public utility rate making and valuation. This, it is said, may be preliminary to the introduction of a bill amending the public service law. The bill, according to the Wheeling *Intelligencer*, will contain specific requirements for the filing of comprehensive details with the commission by all public utilities relating to actual valuations of physical and intangible property, rate-making tabulations, and other information by which comparison between rate-making and taxing purposes may be given the public in an intelligent form. A recent gas rate order has incited this interest.

The Latest Utility Rulings

The Trend in General

A NUMBER of important things happened in a regulatory way during the fortnight from January 18th to February 1st. Friday, January 23rd, was by far the most critical day, because on that same day rate orders of state commissions were literally attacked, as the after dinner orator would say, "from the rock-bound coast of Maine to the sun-kissed shores of California."

The loudest report came from Sacramento, where a Federal statutory three-judge court granted a preliminary injunction to restrain the recent rate order of the California commission for the Los Angeles Gas & Electric Company. It promises to be a long and bitter contest which will probably reach the Supreme Court. The commission has persisted in its policy of fixing rates on a cost basis, although it claims that the rates actually allowed would yield approximately a 7 per cent return on a present value basis. The company not only denies that it could make 7 per cent, but claims that anything less than 8 per cent on present value would be confiscatory.

This case will prove important from a broad viewpoint, if it puts the return proposition squarely up to the Supreme Court. Over a year ago, the Supreme Court in the Baltimore Fare Case indicated that a return in excess of 7½ per cent might be necessary to avoid confiscation. Yet, only a few weeks ago a Federal district court, in Michigan, held that 7 per cent would not be confiscatory. The highest court may do something of lasting importance on this question when the Los Angeles Case comes before it.

On the same day, a Federal district court, sitting in Augusta, granted a temporary injunction against rate orders fixed by the Maine commission for the New Hampshire Gas & Electric Company. This commission fixed the value of the Maine properties of this company, last October, at $178,000. The company claims $255,000. Governor Gardiner has instructed the commission and the state's attorney general to "fight the case to the limit." Incidentally, this is the first time a Maine commission's order has been hailed into the Federal courts.

On the same "black Friday," the West Virginia supreme court suspended the increased rates authorized last December by the public service commission of that state, for the United Fuel Gas Company. About thirty cities and towns are affected.

Also, on January 23rd, the supreme court of Wisconsin decided that the city of Plymouth has no monopoly on the rendition of electric service in Plymouth townships. The Wisconsin Gas & Electric Company will accordingly be permitted to extend its lines into this territory.

Other interesting happenings during this fortnight were the evidences of increased regulatory activity in Louisiana and Iowa. The Louisiana commission, in citing the Southern Gas Line, Incorporated, to show cause why an order should not be entered fixing rates for gas service furnished to the Columbia Gas Company, has assumed jurisdiction over a natural gas pipe line company selling gas to distributing companies. The Iowa board denied permission to the Rock Island Motor Transit Company, a subsidiary of the Chicago, Rock Island & Pacific Railway, to operate a bus line between Des Moines and Davenport in competition with the Rock Island Railroad.

On January 24th, the Wisconsin com-

mission handed down an interesting decision to the effect that the commissions or fees on the sale of common stock paid by one utility to an affiliated utility may not be capitalized. This ruling was made in passing upon an application of the Wisconsin Power & Light Company for a determination of proper accounting practices.

Turning from the states to Washington, we find that Senator Walsh of Montana has moved a step nearer in his fight to have the legality of the status of the three acting members of the Federal Power Commission tested by a *"quo warranto"* proceeding to be started in the District of Columbia supreme court by the district attorney for that jurisdiction. The Federal Trade Commission's investigation of utilities moves on merrily. There has been a slight breathing spell in the railroad consolidation controversy. Rumors are rife that a new bill for the regulation of interstate gas carriers will be introduced in Congress before March 4th. Otherwise, all seems quiet along the Potomac.

A Utility's Corporate Affiliations and Records Are Protected

THE close corporate affiliation between the American Telephone and Telegraph Company and its operating subsidiaries has been brought to the attention of the courts and commissions a number of times and in a number of ways. An interesting attack upon the corporate entity of the Southern Bell Telephone Company before the Tennessee commission lately involved this matter. Thomas J. Williams, complaining against the Southern Bell rates, made a motion for a *pro confesso* judgment against its parent, the American Telephone and Telegraph Company. In overruling the motion, the Tennessee board held that since the proceedings involved only the intrastate rates of the subsidiary, the parent could not be made a necessary party. Another notable point in this case was made when the complainant made a motion for the issuance of a subpœna *duces tecum*, in order to compel the Southern Bell Company to produce in evidence certain records. The motion was overruled because of the failure of the complainant to specify the particular records desired, the voluminous character of such records, the necessity for the continued possession of them by the utility in the operation of its business, and because such records were available by Tennessee law only to the commission, which had already instructed its representatives to investigate them. The complaint was finally dismissed for lack of prosecution. *Williams et al. v. Southern Bell Telephone & Telegraph Co. et al. (Tenn.) Docket No. 1589.*

A Telephone Company Is Not Obliged to Render Physical Connection

IN a suit against the Southwestern Bell Telephone Company by an independent telephone company to compel restoration of physical connection previously existing under a contract which had been terminated by the parties themselves, a judgment of a Federal district court in favor of the defendant was affirmed on appeal. The lower court had held that, in the absence of a contract, a telephone company owes no duty at common law to make physical connection with other telephone companies. Arkansas statutes were likewise held not to impose such an obligation. A provision of such a

statute requiring a telephone company to give "telephone connection and facilities without discrimination" was held to apply to the transmission of messages and not to the concession to rival companies of a proprietary use of its lines. The fact that the Bell Company had permitted such connection in the past was held to be immaterial. *Oklahoma-Arkansas Telephone Co. v. Southwestern Bell Telephone Co.* (*U. S. Cir. Ct. App.*)

An Appellate Mix-up in Indiana

BACK in 1927, the Northwestern Indiana Telephone Company petitioned the Indiana commission for authority to sell its properties to two other telephone companies. During the same year, the commission entered an order denying the petition. An appeal was taken to a circuit court of the state. The judge felt that in the light of new evidence, the commission should be given another chance to pass upon the petition and accordingly remanded it. The commission reaffirmed its former position and, on June 19, 1928, the court found the commission's order unreasonable and directed the latter to approve the petition. The commission then obeyed the court's instruction. In July, 1928, the city of Valparaiso asked the commission to modify the approving order. Its request was dismissed without prejudice. Thereupon, the decision of the circuit court was appealed to a higher court. The latter reversed the lower court in part, ruling that the lower court had no power to direct the commission to approve the company's petition. The lower court then modified its former ruling by simply declaring the commission's order void without further instruction. This left the original petition on the commission's docket. It also left the commission scratching its head over what it was supposed to do next. It asked the attorney general for an opinion. That official advised that it would be unwise for the commission to make any different kind of an order except that which the lower court had originally indicated. To do otherwise would only prolong the litigation, since an order of the commission would in each instance be followed by a vacating decree of the court and so *ad infinitum*. The commission accordingly granted the petition. *Re Northwestern Indiana Telephone Co.* (*Ind.*) *No. 9067.*

Increased Sewerage Rates Are Modified

THE application of the Long Branch Sewer Company for increased rates was considerably modified by the New Jersey commission. The commission found the fair value of the existing property of the applicant as of December 31, 1929, was $752,434, and that it would be required to install additional facilities worth approximately $115,773, and that the fair value of the company's property devoted to public use upon which it is entitled to earn a rate of return would accordingly be $868,207. The commission fixed $63,000 a year as a fair return on this rate base and estimated that a fair net revenue of $117,400 would produce such a return. The commission conceded that existing rates did not yield such revenue, but rates requested by the applicant were calculated to produce revenue of $156,758. They were accordingly declared unreasonable and modified to conform with the commission's findings. *Re Long Branch Sewer Co.* (*N. J.*)

Wisdom of Single Phase Power Service Questioned

IN granting an application of the Missouri Public Service Company to construct and operate a single phase, 2,300-volt transmission line, in the vicinity of the village of Lock Springs, Davies county, the Missouri commission questioned the ability of the applicant to furnish adequate and satisfactory service over a 10-mile transmission line for operating a single phase motor load. The customer to be served is a railroad company that wants power for operating a deep well pump. Presumably the motor for this service will exceed a 5-horsepower capacity. Although the commission declined to deny the certificate for this reason, it cautioned the applicant to take due notice of the service conditions mentioned, and retained jurisdiction for making such further orders as may be necessary to insure adequate service. *Re Missouri Public Service Co. (Mo.) Case No. 7296.*

Authority for the Security Issues of a Maryland Toll Bridge Concern Is Denied

ON February 19, 1930, the Tidewater Toll Properties, Incorporated, contemplating the building of a highway toll bridge across the Choptank river near Cambridge, Maryland, asked the commission of that state for approval of securities and a financial plan. The application was dismissed because the company had not yet completed the procurement of the necessary franchises from the Federal government. In its order of dismissal the commission also indicated, for the company's own information, that the financial structure would have to be amended before it could be approved. Since that time, the company has perfected its franchises and made minor amendments in its proposed financial set-up, and recently submitted its application again for approval. The commission has again denied the application, this time on the ground that notwithstanding the amendment the plan of financing fails to afford proper protection to Maryland investors. The actual cost of the project was estimated to be around $600,000, whereas the proposed securities would sell for approximately $800,000. The difference of $200,000 would be the cost of financing. The commission felt that if such an enterprise could not be financed for less than one third of its actual cost, it had better not be undertaken at all, since the commission would never allow a 33⅓ per cent allowance for cost of financing in a rate-making valuation. The dismissal was without prejudice to the right of the company to submit its application again after amending its set-up. In fact, the commission made a number of pointed suggestions as to how the objectionable features could be eliminated. *Re Tide-Water Toll Properties, Inc. (Md.) Case No. 3050.*

The Oklahoma Commission Rules on Telephone Toll Revenue

PURSUANT to the direction of § 5, Art. 9 of the Constitution of Oklahoma, the commission of that state has issued a general order to all telephone companies, and all persons owning and operating the same, relating to physical connection of telephone lines, and concerning the compensation for facilities furnished, if any. The general order allocates to both the originating and

terminating exchanges 35 per cent of toll revenue from messages either received or sent, paid or collect, with the exception of messages received for which the charge is over 10 cents. The terminating exchange is allowed 4 cents per message on all such messages. The revenue remaining, after the deduction of such commissions, shall be prorated between all companies involved in the transmission in proportion to the air-line distance the messages are carried by each company. The connecting companies may, if they elect to do so, agree upon some composite basis of settlement which will carry out the terms of this order. *Re Toll Charges and Toll Practices of All Telephone Companies Operating in Oklahoma (Okla.) Cause No. 10421, Order No. 5415.*

The Effect of Cost and Revenues Upon the Discontinuance of Railway Agency Stations

WHILE the Montana commission has consistently declined to consider agency cases involving petitions of railroad companies to discontinue agency stations solely on a comparison of station earnings and station costs, it has, nevertheless, indicated in a number of cases that there were circumstances making the question of revenue and station costs of great importance. In denying a recent application of a railroad company for authority to discontinue agency services at two Montana communities, the commission stated that it would consider that a prima facie case of public convenience and necessity justifying the maintenance of an agency, is made out when the annual gross earnings of a station are shown to be in the neighborhood of $15,000. This presumption can, of course, be overcome by a showing that the traffic earnings at the station under consideration are not constant or that revenues are derived chiefly from carload traffic, or any other evidence that tends to show that the rail transportation needs of the territory can be taken care of adequately without the services of an agent. *Re Chicago, Milwaukee, St. Paul & Pacific Railroad Co. (Mont.) Docket No. 1058, Report and Order No. 1584.*

A New Company Takes Over the Assets of a Dead Corporation

ONE day during the spring of 1929, a firm of accountants, examining the books of the old Dryden Telephone Company, discovered the fact that the corporate life of the company had expired during the previous year. In order to provide the continuation of the service, steps were taken to organize a new corporation. In winding up the affairs of the old company, its directors became trustees for the disposition of the assets. A new corporation, known as the Dryden Telephone Corporation, recently applied to the New York commission for a certificate of convenience and necessity to issue securities to raise capital to take over the assets of the old company, and for a certificate of convenience and necessity to continue operation. Commissioner Neal Brewster approved of the application as being the only means in which the service could be continued. A certificate was issued and authority was granted for the issuance of 16,500 shares of common stock at a par value of $1 per share. *Re Dryden Telephone Corp. (N. Y.) Case No. 6070.*

NOTE.—The cases above referred to will be published in full or abstracted in *Public Utilities Reports.*

Public Utilities Reports

COMPRISING THE DECISIONS, ORDERS, AND RECOMMENDATIONS OF COURTS AND COMMISSIONS

VOLUME 1931A NUMBER 4

Points of Special Interest

Titles and Index

TITLES

INDEX

Robert V. Hardie

v.

A. F. Eickerman, Doing Business as Eickerman Transfer System et al.

[Decision No. 22975, Case No. 2732.]

Contempt — Evidence necessary to support citation.

Evidence of deliberate violation of a Commission order must be clear and convincing in order to support an adjudication of contempt.

[October 17, 1930.]

ORDER *for motor carriers to show cause why they should not be subjected to contempt proceedings for violation of a Commission order; dismissed.*

APPEARANCES: Owen C. Emery, for complainant; Richard T. Eddy, for defendants.

CARR, Commissioner: This proceeding is on orders by the Railroad Commission directing A. B. Mockenhaupt and L. I. Mockenhaupt, respectively, to appear before it and show cause why they should not be punished for contempt for their refusal, failure, or omission to obey the order of the Railroad Commission, in Decision No. 22118, dated February 11, 1930, and issued in Case No. 2732, which order reads in part as follows:

It is hereby *further ordered,* that defendants A. B. Mockenhaupt and L. I. Mockenhaupt, copartners doing business under the fictitious name and style of B. & L. Truck and Transfer Company, be and they are hereby ordered to immediately cease and desist from the operation of an automobile truck line as a common carrier of property, for compensation, over the public highways of this state and over a regular route between the city of Los Angeles on the one hand, and points in the Owens Valley on the other hand, said Owens Valley points including Olancha, Lone Pine, Big Pine, Independence, and Fish Springs, and not to resume such operation unless and until a certificate of public convenience and necessity will have been secured from the Railroad Commission after proper application has been made therefor in accordance with the provisions of Chap. 213, Statutes of 1917, and effective amendments thereto.

The orders to show cause were issued on affidavits filed with the Railroad Commission by Robert V. Hardie, complainant in Case No. 2732, who in said affidavits declared that notwithstanding said cease and desist order contained in Decision No. 22118, A. B. and L. I. Mockenhaupt were conducting the same operations as were carried on by them prior to the issuance of said order, and that they had been continuously since the making of said order transporting for compensation groceries, meat, and other property from various consignors in Los Angeles to various consignees in Owens Valley, in contempt of the order of the Railroad Commission.

A public hearing was held at Los Angeles, testimony heard, and an order of submission made.

It appears from the evidence that respondents are, under private arrangement, transporting property for the Safeway Stores from Vernon, a point not covered by the Commission's cease and desist order, to Bishop. They had also, counsel for respondents frankly stated, transported to Bishop property delivered at the Vernon store by the Cudahy Packing Company of Los Angeles. The Cudahy packages were delivered at the Bishop Safeway Store and the manager at that store saw to it that the packages were delivered to one Marcus, a butcher. On advice of counsel for the Mockenhaupts the practice was discontinued. It further appeared that subsequently to the date of the order the respondent transported four truck loads of property to the Owens Valley, this being done it was claimed under private contract.

I am not satisfied an adjudication of contempt is justified by the record. To support such an adjudication the evidence of violation of the Commission's order should be clear and convincing. It is not clear that the Commission's order has been violated by the operations disclosed by the evidence. I, therefore, recommend that the order to show cause be dismissed.

MISSOURI PUBLIC SERVICE COMMISSION

North Grand Improvement Association

v.

St. Louis Public Service Company

[Case No. 6932.]

Service — Street railway — Rerouting of a particular line.

A complaint by a civic organization against the rerouting of a street car line, alleging unreasonable inconvenience caused thereby to residents in

certain districts, was dismissed upon a showing that the street railway company had good and sufficient cause to reroute the line, and had done so in what appeared to be the most practical manner with due regard to the adequacy of the service as a whole.

[October 7, 1930.]

COMPLAINT *by a civic organization against the rerouting of a street car line; dismissed.*

ING, Commissioner: The North Grand Improvement Association, a civic organization of the city of St. Louis, filed a complaint with this Commission against the St. Louis Public Service Company with reference to the rerouting of the Natural Bridge street car line of said company. The complaint alleges that the rerouting of the Natural Bridge line, as outlined by the company, will cause untold inconveniences to its citizens within the territory from Prairie avenue on the west to Jefferson avenue on the east, and the association is of the opinion that while it is seemingly necessary to reroute the line around Twelfth boulevard from Franklin avenue on the south to Carr street on the north, because of a construction of the Illinois Terminal Railway system on Twelfth boulevard, the line of rerouting could be very materially closer to Twelfth boulevard.

Answer was filed by the St. Louis Public Service Company, in which defendant alleges that, on March 16, 1930, it became necessary for it to reroute certain of its lines which crossed or intersected High street at or near the place where the St. Louis Electrical Terminal Railway Company was constructing both underground and overhead structures; that the rerouting of the Natural Bridge line was in substantial accordance with the suggestions of the city plan commission of St. Louis, the Rapid Transit report to the city of St. Louis, and the report of the Transportation Survey Commission of St. Louis, for the ultimate routing of defendant's lines, such reports having been made in the years 1919, 1926, and 1929, respectively.

The defendant avers that persons formerly using the Natural Bridge line in the district affected have not been deprived of street railway service, but that all such persons have ample street railway facilities and are being served by other lines of the defendant; that no hardship will be suffered by the riding public by the operation of the Natural Bridge line as rerouted and the abandonment of that portion of said line as operated before March 6, 1830, between Spring and Natural Bridge avenues and the downtown district of St. Louis, but that other ample and sufficient street railway facilities are available to the public in the district affected.

This case was heard by a member of the Commission at St. Louis, Missouri, on May 7, 1930.

Facts

The testimony shows that the

former route of the Natural Bridge car line was from Kingshighway and Natural Bridge road, east on Natural Bridge road to Spring avenue, south on Spring avenue to North Market street, east on North Market to Garrison, south on Garrison to Thomas, east on Thomas to Leffingwell, south on Leffingwell to Stoddard, east on Stoddard to Carr, east on Carr to Broadway, and south on Broadway to Chouteau avenue.

On March 16, 1930, the street railway company, because of work being done by the Illinois Terminal Railway system on twelfth boulevard, rerouted the Natural Bridge line. The old route was retained from Kingshighway and Natural Bridge road to Spring avenue and Hebert street, which is one block south of Natural Bridge road. Instead of proceeding south along Spring avenue to North Market, the line was routed east on Hebert street to Jefferson, south on Jefferson to St. Louis avenue, east on St. Louis avenue to 14th street, south on 14th street to Cass street, east on Cass to 11th street, south on 11th to Morgan, east on Morgan to 8th, south on 8th street to Walnut, east on Walnut to 7th street, and south on 7th street to Chouteau avenue. There is now no car for downtown St. Louis between Easton avenue and St. Louis avenue; but on Hebert street there are three car lines. Some of complainants contend that the former route should be restored and others that the rerouting should be over other lines.

M. J. Cullinane, a witness for complainants, expressed the opinion that the Natural Bridge line should be routed to go down Carr street to 14th, then south to the old Hodiamont tracks, and then to Olive or Market; that if that is not feasible the route should go from 18th and Carr south over the 18th street belt line, which is now vacant, and then downtown, or if that route is not feasible, to start from Jefferson avenue, and then to Market street. This witness stated that the people living in the immediate territory affected are street car riders; that many of the people residing in that territory are compelled to walk a quarter of a mile to get a street car going downtown, and that people coming north on the Grand avenue line, intending to go west or east, go into a lonesome neighborhood and have to walk four or five blocks to their homes, which is not desirable in the nighttime.

Persons living in the district affected by the abandonment of the old Natural Bridge car line may use the Cass line, the Hodiamont line, the Wellston line, or the Olive street line, but must walk from approximately one-half block to as far as five blocks. Most people living in the area affected by the removal of the Natural Bridge car line now take the Cass avenue line or the Wellston line to take them to downtown St. Louis.

One witness for complainants stated that he appeared in the interest of the people residing in the territory from 14th street to Jefferson avenue. He stated that they have no car line in that area

that goes east from Franklin avenue over to the Cass avenue line; that there are a number of small children and people who need conveyance to go to churches and places of business; that at late hours of the night it is dangerous to walk a block in that neighborhood; that there has been considerable trouble in that section by persons being assaulted and that there is no available car now except the 18th street car to Jefferson avenue. The same witness stated, however, that there is a double track car line operating on Franklin and Cass avenues; that both of these lines extend to downtown St. Louis and that the distance between these two car lines is from six to seven blocks, so that the maximum distance one would have to walk to get a car line east or west would be three or four blocks.

A complaint was also made that the abandonment of the Natural Bridge line and the rerouting as at present has seriously affected business in that territory.

Dr. J. W. Bechtold, representing the 14th Street Improvement Association, stated that said association, consisting of more than thirty business houses along 14th street, is heartily in accord with the present routing of the Natural Bridge street car line; that by the combination of the old Tower Grove and Natural Bridge line, and taking in a portion of the old Belt line, the city as a whole is benefited by getting one through line from Garrison and Arsenal streets, through the downtown district and out to north and west St. Louis; that a more satisfactory condition exists in service to the downtown district, and the working people are saved considerable time.

The testimony shows that the time consumed in going from the territory affected by the rerouting is shortened approximately ten minutes, that is, it takes about ten minutes less to go from that territory downtown under the rerouting plan than it formerly did. There are some four or five fewer curves on the present route than there were on the old route.

Mr. L. C. Datz, chief engineer of the St. Louis Public Service Company, stated that the present rerouting of the Natural Bridge line was made necessary because of the construction work incident to the bringing in of the Illinois Traction Terminal subway system, on High street north of Washington; that because of the excavation it was impossible to continue operations on the old line. Mr. Datz stated that in selecting a route in the rerouting of the Natural Bridge line, the defendant consulted the latest report of the transit survey commission of St. Louis on rerouting and followed its plan; that a report issued in 1926 by Mr. Kinsey and Mr. Smith, which dealt with proposed rapid transit operations for St. Louis was consulted and that said report recommended the rerouting adopted in this case.

The area affected by the rerouting was described by Mr. Datz as bounded by Vandeventer on the west, Easton avenue and Franklin

street on the south, 8th street on the east and Cass, Glasgow, and St. Louis avenue on the north. Mr. Datz stated that it is the desire of the St. Louis Public Service Company to make the present rerouting plan a permanent plan, depending upon the action taken by the city on the transit survey commission's recommendation.

The distance between Franklin avenue and Cass avenue, parallel streets, each of which now has a double track rendering street car service to downtown St. Louis, is approximately 2,200 feet, so that the maximum walk occasioned by the rerouting of the Natural Bridge line would be half of that distance, or 1,100 feet, which is somewhat less than one fourth of a mile.

Petitions signed by numerous residents of the city of St. Louis, requesting the Public Service Commission to compel the St. Louis Public Service Company to restore its service over the abandoned Natural Bridge line, were filed with the Commission.

Conclusions

From all of the evidence in this case, it appears that the St. Louis Public Service Company was compelled to reroute its Natural Bridge car line, and the Commission finds that it is not practicable to require it to restore said line to the former route. The same reason which caused the abandonment of the former Natural Bridge car line still exists, and the Commission is inclined to believe that the St. Louis Public Service Company and the authorities of the city of St. Louis should be permitted to work out what to them appears to be the most practical system of routing street car service and promoting rapid transit within the city. If at any time in the future, however, it should appear that the public interest requires a change of route, the Commission would exercise its authority and order such rerouting as the facts might show would be in the public interest. The Commission does not believe that the evidence in this case justifies it in ordering the St. Louis Public Service Company to reroute its present Natural Bridge street car service, and the complaint will, therefore, be dismissed. The defendant has followed the suggestions of the St. Louis Transit Survey Commission and all other organizations that have made investigations as to the rerouting of street car lines in St. Louis, all of which suggestions have been with a view of affording the public better and more rapid transportation.

An order in accordance with the views herein expressed will be issued.

Stahl, Chairman, Hutchison and Hull, Commissioners, concur; Porter, Commissioner, absent.

INDIANA PUBLIC SERVICE COMMISSION

Re Commonwealth Telephone Corporation

[No. 10233.]

Rates — Telephones —Free interexchange service.

1. Petition of one telephone company to collect a toll charge of 10 cents per message on all messages received from the switchboard of a neighboring telephone company was granted, although the distance between the two communities served was only 2 miles and a unified telephone service could be furnished with more convenience throughout the exchange areas served by both companies, p. 345.

Rates — Telephones — Free switching service — Right of utility.

2. The law does not compel one telephone utility to continue to offer free switching service to a neighboring utility, regardless of the convenience to the community that would result from such an arrangement or the length of time during which the utility has submitted to such an arrangement, p. 345.

(SINGLETON, Commissioner, dissents.)

[October 3, 1930.]

APPLICATION *of a telephone utility for authority to collect a toll charge on messages received from the exchange of another telephone utility; granted.*

APPEARANCES: Mote, Mantel & Loughry and William A. Hough, for the Commonwealth Telephone Corporation; Cook and Walker, for the Wilkinson Switchboard and Telephone Company.

ELLIS, Commissioner: On August 6, 1930, Commonwealth Telephone Corporation filed its petition with the Public Service Commission, which petition, omitting the caption and signatures, is as follows, to wit:

"Commonwealth Telephone Corporation represents and shows that it is a corporation organized and existing under and by virtue of the laws of the state of Indiana and is a public utility within the meaning of the Shively-Spencer Utility Commission Act.

"Commonwealth Telephone Corporation further represents and shows, that among others, it maintains a telephone exchange plant and system serving the town of Shirley and the territory immediately adjacent thereto; that its plant and system are maintained in a high state of efficiency with the best facilities for furnishing telephone service to its patrons and to the public; that its facilities for receiving and transmitting long-distance messages are maintained in a highly efficient state of repair, all of which necessitates the

expenditure, by your petitioner, from time to time of large sums of money.

"Petitioner also says that its rates, tolls, and charges have heretofore been prescribed by the Public Service Commission of Indiana.

"Commonwealth Telephone Corporation represents and shows that the Wilkinson Switchboard and Telephone Company is a corporation organized and existing under and by virtue of the laws of the state of Indiana and is a public utility within the meaning of the Shively-Spencer Utility Commission Act; that it serves approximately two hundred subscribers and that its rates, tolls, and charges are fixed by assessment upon the individual subscribers, who, for the most part, are also stockholders in the enterprise; that said subscribers have heretofore enjoyed free service to all of the subscribers of the Shirley exchange of your petitioner and by virtue of such free service have heretofore been able to furnish service to its own subscribers at a charge substantially less than that paid by petitioner's own subscribers; that said Wilkinson Switchboard and Telephone Company's plant and property is not maintained in a high state of efficiency and that said company owns practically no toll lines.

"Commonwealth Telephone Corporation further says that between its own exchange at Shirley and the Wilkinson exchange of the Wilkinson Switchboard and Telephone Company, petitioner is now and has for many years furnished more than three fourths of the facilities necessary in the furnishing of said free service to the Shirley exchange and its subscribers, from the subscribers and patrons of the Wilkinson Switchboard and Telephone Company; that said arrangement or situation is highly discriminatory and prejudicial to the best interest of the Commonwealth Telephone Corporation and to the subscribers connected with its Shirley exchange.

"*Wherefore,* Commonwealth Telephone Corporation prays your Honorable Body, after due hearing, to authorize Commonwealth Telephone Corporation to charge and collect 10 cents per message on each and every message received at its Shirley exchange from the Wilkinson Switchboard and Telephone Company or any of its patrons and that said Wilkinson Switchboard and Telephone Company shall be made accountable for the payment to the Commonwealth Telephone Corporation of any and all such charges."

The matters averred in the petition were heard in the town hall at Shirley, on September 15, 1930, and legal notice of the time and place of said hearing was given, as required by law. The appearances were as above set forth.

The evidence showed that the telephone exchange at Shirley is owned by the Commonwealth Telephone Corporation, and serves approximately 300 patrons; that the telephone exchange at Wilkinson is owned by the Wilkinson Switchboard and Telephone Company and serves approximately 200 patrons, almost all of whom are stockholders in the company; that in most of the territory served by the two companies there is now, and has been for many years, a duplication of facilities; that the petitioner through its Shirley exchange

already serves several persons in the town of Wilkinson with telephone service, and that such service has been furnished for many years.

[1, 2] The evidence further showed that the exchange rates of the Wilkinson Company are fixed by assessment upon the stockholders, and have never exceeded $8 per year; that there are four direct metallic trunk circuits and one grounded trunk circuit between Shirley and Wilkinson, and that all of these circuits are kept busy most of the time; that while the ownership of parts of two circuits is disputed, three are owned entirely by the Shirley Company, and the evidence is reasonably clear that practically all of the other two circuits for a long period have been maintained by the Shirley Company. In other words, substantially all of the physical facilities between the two exchanges are owned and have been maintained by the petitioner. The financial burden upon petitioner of maintaining these facilities for the use of the subscribers of both companies, and from which no revenue is derived, is unfair and unlawful, and particularly is it unfair and unlawful as to the use of such facilities by subscribers of the Wilkinson Company from whom no revenue whatever is obtained by petitioner, directly or indirectly.

In the Cape Girardeau Bell Telephone Case, P.U.R.1919E, 858, 870, the Missouri Public Service Commission reaffirmed and quoted its language used in Citizens Teleph. Co. v. Alma Teleph. Co. (1917) 5 Mo. P. S. C. 376, 379.

"It is axiomatic in the business affairs of life that a thing of value cannot continuously be given for nothing."

In the Cape Girardeau Case, *supra,* the Cape Girardeau Company maintained six circuits to a neighboring telephone exchange at Jackson, the annual expense of operating which included depreciation and return on investment, it was shown, amounted to a large sum of money. The Missouri Commission established a toll charge. The testimony in this case, by the way, was to the effect that on the installation of a toll charge, the number of messages would be reduced to 13½ per cent of the number passing over the circuits during the period of free service.

That there is no basis in law to compel one telephone company to furnish free switching service to the subscribers of a neighboring telephone exchange, is well settled.

Re Valley Springs Teleph. Co. (S. D.) P.U.R.1921D, 406; Re Clinton County Teleph. Co. (Mo. 1924) P.U.R.1925A, 744; Re Mt. Vernon Teleph. Co. (Wis.) P.U.R.1922D, 139.

That as between a toll charge or free service between exchanges, the toll charge is the proper method, is fair and just, and best for the public and for the company is well settled law.

Re Chesapeake & P. Teleph. Co. (Va.) P.U.R.1920F, 49; Smith v. Squires (Mo. 1916) P.U.R.1917A, 247; Re Cape Girardeau Bell Teleph. Co. (Mo.) P.U.R.1919E, 858; Re Monroe Independent Teleph. Co. (Neb.) P.U.R.1921E, 481; Re Coos Teleph. Co. (N. H.) P.U.R.1918F, 592; Re Marion & N. Teleph. Co. (Wis.) P.U.R.1925E, 134.

Also, the cost of interexchange of telephone service should not be borne by all of the subscribers of a telephone company, but by those only who use such service.

Re Union County Teleph. Co. (Or.) P.U.R.1920C, 1002; Re Union Home Teleph. & Teleg. Co. (Cal.) P.U.R.1918E, 608.

Likewise, it is the more equitable practice to impose toll charges between exchanges than to increase the rental charge to a sufficient amount to continue the free service.

Re Culpeper Teleph. Co. (Va.) P.U.R.1920D, 305; Eel River Teleph. Co. v. Whitley County Teleph. Co. (Ind.) P.U.R.1917F, 810.

The mere fact that subscribers of two telephone exchanges have enjoyed the privilege of free service for many years does not constitute a valid reason why a telephone company should be legally or morally expected to continue the same.

Re Thayer & Alton Teleph. Co. (Mo.) P.U.R.1919F, 590.

While it is true that in some jurisdictions and in some instances free service between telephone exchanges, owned by different interests, occasionally has been continued by order of regulatory bodies, we know of no legal authority for compelling one company to furnish free service to a telephone exchange owned by another company, and while the distance between Shirley and Wilkinson is only 2 miles and while unquestionably a unified telephone service could be furnished by a single company throughout the exchange areas served by both companies, we know of no warrant in law to compel the Shirley Company to continue to render without charge a service which the Shirley Company is declining to furnish without some compensation.

The evidence presented in the hearing of the cause shows that for the first six months of 1930 the Shirley exchange failed by $482.20 to earn its operating expenses, including 6 per cent depreciation on the book value of the plant. Evidence in the cause showed that more than 6,000 messages per month are passed over the circuits between Shirley and Wilkinson, which are largely owned and maintained by petitioner, and that of the total number approximately 80 messages per day are received at the Shirley exchange from the patrons of the Wilkinson Company.

Having heard all of the evidence in the above entitled cause, and being advised in the premises, the Commission finds that the prayer of the petitioner should be granted, and it will be so *ordered.*

It is *further ordered* by the Public Service Commission of Indiana that effective October 15, 1930, the Commonwealth Telephone Corporation be, and it is hereby, authorized to charge and collect 10 cents per message on each and every message received at its Shirley exchange from the Wilkinson Switchboard and Telephone Company, of any of its patrons, and that said Wilkinson Switchboard and Telephone Company shall be made accountable for the payment to the Commonwealth Telephone Corporation of any and all such charges; that said charge shall be for messages of three minutes duration or less, and that the customary charges for overtime shall apply.

It is *further ordered* that petitioner shall pay to the state of Indiana, through the secretary of this Commission, the sum of $6.76, being costs occasioned by the filing and hearing of this cause.

McIntosh and West, Commissioners, concur.

INDIANA PUBLIC SERVICE COMMISSION

City of Vincennes

v.

Vincennes Water Supply Company

[No. 10191.]

Service — Water supply — Potable water.

1. A water utility must furnish a supply which is not only free from malign bacteria, but which also meets as nearly as possible the requirements laid down by physicians for drinking purposes, namely, water which is both odorless and tasteless, p. 357.

Service — Improvement of water supply.

2. A utility furnishing water which possessed objectionable tastes and odors was directed to correct these faults by the installation of an aerator, by installing additional means of applying chemicals, and by preammoniation, such improvements to be completed within five months, p. 357.

Monopoly and competition — Inadequate service — Water utility.

3. A utility furnishing water which possessed objectionable taste and odor was required to make certain improvements, and was given a reasonable time in which to make them, before the Commission would entertain an application by a municipality for a certificate of convenience and necessity to establish and operate a competitive water-works service, p. 358.

Valuation — Revaluation — New evidence — Water utility.

4. A motion for a revaluation of utility property was granted upon allegations as to new evidence in regard to the value not previously presented to the Commission or to the Federal courts, and in further view of allegations as to changes in price levels, p. 359.

Rates — Procedure — Pending revaluation.

5. Immediate action on a petition of a municipality and others alleging exorbitant rates of a water utility was deferred pending a revaluation of the utility's property, and a rehabilitation of its service in conformity with the Commission's order, p. 364.

[September 26, 1930.]

COMPLAINT *by a municipality against the rates and service of a water utility; service ordered to be rehabilitated and a revaluation directed.*

APPEARANCES: Joseph W. Kimmell, Mayor, and Gilbert M. Alsop, City Attorney, for city of Vincennes; Clyde H. Jones, Indianapolis, and Kessinger & Hill, Vincennes, for Vincennes Water Supply Company.

ELLIS, Commissioner: On June 25, 1930, the city of Vincennes filed with the Public Service Commission of Indiana its petition in regard to the service and rates of the Vincennes Water Supply Company, as follows:

"Vincennes, Ind.,
June 24, 1930.

Public Service Commission of the State of Indiana, Indianapolis, Indiana.

Gentlemen:

"I hand you herewith a resolution of the common council of the city of Vincennes with regard to the water supply service and water rates of the Vincennes Water Supply Company.

"As directed by said resolution, I herewith petition your Honorable Body for an investigation of the charges and conditions set out in said resolution, and ask that a public hearing be held on the same in the city of Vincennes at the earliest possible date. The city of Vincennes is asking an order from you reducing the water rates charged to the city and to the citizens of Vincennes, and requiring the Vincennes Water Supply Company to give better service to its patrons. In the event such a change cannot be brought about, the city of Vincennes is asking that you grant it a certificate of convenience and necessity permitting the city to construct a municipal water plant.

Respectfully submitted,
G. M. Alsop,
City Attorney.

"RESOLUTION No. ——

"Whereas, the city of Vincennes is a modern city in every respect, with fine streets, complete storm and sanitary sewer system, and has excellent electric, telephone, and gas service, and

"Whereas, said city of Vincennes is located on the banks of the Wabash river and has available an abundant supply of water, and

"Whereas, an unlimited supply of gravel filtered water is available within a mile distant of said city in any direction, and

"Whereas, the Vincennes Water Supply Company now has the franchise to furnish water for said city under an indeterminate permit issued by the Public Service Commission of the state of Indiana, and

"Whereas, the said Vincennes Water Supply Company is not giving adequate service to the said citizens of Vincennes in the following regards:

"1. The water furnished to said city by said water company is unfiltered, and at times of a filthy odor, and has an abominable taste that is nauseating to those who are compelled to use it; that the quality of said water is so bad that many of the large commercial users of water, such as hotels, restaurants, soda fountains, and factories have been compelled to install water systems.

"2. The mains are not large enough to furnish adequate fire protection to many parts of the city.

"3. The pressure maintained in said water mains is not sufficient for good service in many parts of the city.

"4. The force maintained at the pumping station of the Vincennes Water Supply Company is not sufficient to maintain good service and adequate fire protection to said city of Vincennes.

"5. The water mains are in bad repair and in such a weakened condition that breaks are continually occurring, which results in our streets being excavated creating hazards and inconveniences both to life and property. And

"Whereas, the city of Vincennes is being taxed more than $90 per hydrant for fire protection amounting to approximately $32,000 per year; said charge for fire protection being far in excess of the usual and ordinary charge for such service, and

"Whereas, the citizens of said city are compelled to pay an exorbitant rate for such very inferior water supply service, and

"Whereas, said Vincennes Water Supply Company is so incompetently managed that it claims it can not furnish water of good quality to said city at a reasonable cost to the users of water and to the city for fire protection, and

"Whereas, municipal-owned water plants all over Indiana are furnishing good water at reasonable rates, and at the same time making a good profit in return for the municipality. Therefore,

"Be it resolved by the common council of the city of Vincennes, Indiana, that the Public Service Commission of the state of Indiana be informed that the service furnished the citizens of Vincennes and the city of Vincennes by the Vincennes Water Supply Company is inadequate and very inferior to good standards of water supply service; that the rates charged for said water service are exorbitant, unreasonable, and prohibitive both to the city and to the private water user.

"Be it further resolved, that the city attorney be directed to petition the Public Service Commission of the state of Indiana for an order compelling said Vincennes Water Supply Company to improve its service by installing modern filtering facilities; that it be compelled to install a water softener as modern plants are now equipped; that it be compelled to lay larger water mains to the district known as Burnett Heights and to other points in said city that a survey will show are needed; that it be required to maintain sufficient pressure in its said water mains that the city fire department may be able to fight fire without the aid of booster pumps supplied by said city.

"Be it further resolved, that in the event said Vincennes Water Supply Company is unwilling to reduce its rates and improve its service as set out in this resolution that the Public Service Commission of the state of Indiana be petitioned to

grant to said city a certificate of convenience and necessity, permitting said city of Vincennes to construct a municipal water plant.

"Passed this 23rd day of June, 1930.

Joseph W. Kimmell,
Mayor.

ATTEST:
J. I. Muentzer,
City Clerk.

"Presented to the mayor for his approval and signature this 23rd day of June, 1930.

J. I. Muentzer,
City Clerk.

"Approved and signed by me this 23rd day of June, 1930.

Joseph W. Kimmell,
Mayor.

ATTEST:
J. I. Muentzer,
City Clerk.
State of Indiana,
Knox County,
City of Vincennes, ss:

"I, J. I. Muentzer, clerk of the city of Vincennes, Indiana, hereby certify that the above and foregoing is a true and correct copy of the Resolution in the matter of the Vincennes Water Supply Company, as adopted and passed by the common council of the city of Vincennes, Indiana, at its regular meeting June 23, 1930.

"In testimony whereof I hereunto set my hand and official seal this 24th day of June, 1930.

"J. I. Muentzer,
"Clerk of the city of Vincennes,
"Indiana."

(Seal)

Subsequent to the filing of said petition the Commission directed its engineering, accounting, and service departments to make certain investigations in connection with the matters covered by the petition. A member of the engineering staff went to Vincennes and made a personal investigation of certain matters and said engineer appeared as a witness and gave testimony at the hearing in this cause. A member of the accounting staff of the Commission prepared a report taken from the books of the Vincennes Water Supply Company including balance sheets, income accounts, distribution system statistics, and a comparison of consumers' data. Said report was submitted as an exhibit at the hearing in this cause. The director of service of the Commission went to Vincennes and made an independent investigation of the service of the Vincennes Water Supply Company. The director of service interviewed many consumers of the respondent and filed a written report with the hearing Commissioner, and copies were furnished the petitioner and respondent. This report was not submitted in evidence at the hearing as most of the patrons interviewed by the director of service were called as witnesses by the city of Vincennes.

Upon completion of the investigations and reports referred to above the matter was set for hearing at the city hall, Vincennes, Indiana, 10 A. M. August 12, 1930, and legal notice of the time and place of said hearing was given as required by law. The hearing was held at the time and place above

indicated with the appearances above noted. Further hearing was held on August 13th, 20th, 21st, and 22nd. One hundred forty witnesses were heard, including one hundred thirty-four for the petitioner city of Vincennes, and six witnesses for the respondent Vincennes Water Supply Company. It should be noted that practically all witnesses for the city of Vincennes were patrons of the respondent. It should be noted further that not a single patron was called at the hearing to testify for the respondent. The evidence of the petitioner while covering a great many matters included particularly the complaints of patrons as to the character and quality of service furnished by respondent, and the alleged exorbitant, unreasonable, and prohibitive nature of the schedule of rates now in force for water service of the respondent.

Character and Quality of Service

The water supply for the city of Vincennes is obtained from the Wabash river by the respondent, its pumping station and plant being located on the banks of said river.

The hearing Commissioner and representatives of the parties made an inspection of the plant during the hearing, at the request of the respondent. The process followed in the operation of the plant, according to information furnished the hearing Commissioner by the engineering staff of the Commission is as follows: The raw water is pumped from the river to the sedimentation basin by low duty pumps. Alum which is introduced into the water on its way to the sedimentation basin causes the sediment in the raw water to coagulate, and as the velocity of the water in the sedimentation basin decreases, the sediment is partially precipitated in this basin. The water then flows by gravity to the sand filter beds where the remaining sediment is caught and a clear water passes into the clear wells. During part of the summer, air has been forced through the clear water in the wells in an attempt to remove odors and tastes. The water in the clear wells together with a predetermined amount of chlorine is taken by the suction of the high duty pumps and forced into the distribution system for use or into the standpipe for storage.

It appears from the evidence that the water furnished by the respondent has noxious tastes and odors. These tastes and odors, according to the testimony, have been present in the water with great frequency during the last several months. While the evidence shows that during flood stages of the river, particularly during the past winter, there was an objectionable taste and odor present in the water, this is not the same taste and odor which has been present during the summer months, during extremely low stages of the river. The causes of the noxious tastes and odors are not definitely established by the evidence, in the opinion of the Commission, but it appears likely that the objectionable tastes and

odors present during the flood stages of the river may be due to the presence of phenol or from the heavy chlorination required at that time. The noxious tastes and odors which have been present in the water during the past summer and which were very noticeable at the time of the hearing may be caused by the presence of alga. These tastes and odors were described by reputable witnesses as "funky," "stale," "almost unbearable," "like carbolic acid," "musty," "terrible," "unbearable," "rotten," "offensive," "stagnant," "undrinkable," "woodsy," and "leafy."

On account of the objectionable tastes and odors, according to the evidence, the water furnished by the respondent is not suitable for drinking purposes, and is generally rejected for drinking purposes both in private homes and in public restaurants, hotels, and soda fountains. The evidence further shows that the water is objectionable for use in cooking, and that the noxious tastes and odors do not always disappear even when the water is used in the preparation of beverages such as coffee and tea.

Claude E. Gregg, president of the Vincennes Packing Corporation, and an ex-mayor of the city of Vincennes, testified that his company cannot use the water furnished by the respondent in the preparation of food products, stating that the objectionable tastes are transmitted from the water into the food products.

A number of witnesses testified as to the effect of the water furnished by respondent on various kinds of animal life, but this evidence need not be discussed in view of the mass of evidence indicating that the water frequently is not suitable for human consumption.

The evidence shows that the water furnished by the respondent is free from bacteria according to analyses made by the state board of health. However, the evidence indicates that the water furnished by the respondent is injurious to the public health in that many persons refrain from drinking the proper amount of water necessary for health, or obtain water from contaminated wells. Scores of wells have been drilled in Vincennes in order to obtain water for drinking purposes, and the evidence indicates that in a number of instances the water obtained from these wells is contaminated.

A number of physicians of the city of Vincennes testified concerning the effect of the presence of odors and tastes in the water furnished by the respondent upon the public health. All of these physicians agreed that a satisfactory water supply for drinking purposes should be both odorless and tasteless. While it is impossible to discuss at length in this opinion the testimony of all physicians who were called as witnesses, particular attention will be directed to the evidence given by Dr. J. N. McCoy. Dr. McCoy, according to the evidence, is an expert on water supplies, having given particular attention to matters of this kind during service as a medical officer in the United States Army. Dr. Mc-

Coy's testimony, taken from the record, is as follows:

Direct Examination, Questions by Mr. Kimmell

Q. What is your name?

A. J. N. McCoy.

Q. What is your profession?

A. Physician.

Q. How long have you practiced as a physician?

A. Since 1896.

Q. And all that time in Vincennes?

A. Yes, sir.

Q. Was there a time when you were in military service with the government?

A. Yes, sir, I was in service during the World War.

Q. How long a service did you have?

A. Two years and three months.

Q. Where do you live?

A. I live on Broadway in Vincennes.

Q. Do you use city water?

A. Yes, sir.

Q. What has been your experience with the quality of city water here, regarding the taste and odor during the past two or three years?

A. Well, it has been bad water.

Q. Have you studied, when in military service and in your profession, have you studied the water question, the pure water question?

A. Yes.

Q. I wish you would just give the Commission your ideas as to what is wrong with this water if you have come to any conclusion about it.

A. Well, good drinking water should be odorless and tasteless and transparent, free from foreign matter, in addition to which, of course, it should be germ free. I have not made any analysis of this water with regard to its germ content, but I am willing to believe that it is germ free, but it isn't odorless, it isn't tasteless, and, without doubt, it contains heavy proportions of chemicals, some of which smell like creosote, of course, the odor of chlorine makes it not desirable for drinking water. It is commonly agreed by health authorities that drinking water should be odorless and tasteless.

Q. Do you know anything about the plant out here?

A. I never inspected the plant but I know from the character of that water that that plant is lacking in the equipment to transform river water into good drinking water.

Q. Can you find a more contaminated source of raw water around Vincennes than the Wabash river?

A. You couldn't unless it might be a cesspool.

Q. That's what it is in one respect, a sewer for the whole county.

A. No doubt, it contains a large amount of sewage.

Q. I will ask you whether or not in your opinion it would not be possible to get a more palatable water and a water transformable into pure water with less use of chemical by putting down wells in gravel pits around Vincennes.

A. Unquestionably, if the wells were deep enough.

Q. In your opinion could it be done?

A. Yes.

Q. You know from your experience and residence here that there is an abundance of water all around Vincennes?

A. Yes.

Q. At most any depth you want to go, isn't that a fact?

A. Yes.

Q. Now I will ask you this, isn't it necessary for the public health of a community that it have a plentiful supply of wholesome water for home consumption?

A. It is.

Q. When you have water that has an obnoxious taste I will ask, and people dislike drinking it, I will ask if that doesn't tend to force people to drink other impure water?

A. Yes.

Q. You wouldn't recommend the sinking of pumps around in these shallow depths around Vincennes, would you?

A. I have repeatedly protested to patients of mine against that and warned them that when they were doing that they were apt to get vicola bacillus from neighboring cesspools or outhouses, and stated to them that city water, undesirable as it was, was in all probability safe for them while I stated that what they get from pumps was not safe.

Q. If we have a situation here in Vincennes now brought about by reason of unpalatable water, by reason of which hundreds of our citizens are drinking water out of pumps and other wells, private wells, such as this well at the courthouse, I will ask you if that is not dangerous to the public health of the community.

A. The ordinary well is dangerous to the health of the community. I won't say that about the courthouse well because it is far enough removed from cesspools and sources of contamination, it is probably the only safe well in town of ordinary depth, there might be deep wells which are safe, but I don't know about them.

Q. Is there much danger of contamination if you'd go over here in Illinois on one of those farms seventy-five or a hundred yards or farther away from any town and put down wells, is there any danger there of contamination?

A. If you'd go to enough depth there is no danger of contamination.

Q. Would it take much chlorination of that water to make it absolutely free from any bacteria, dangerous bacteria?

A. It probably wouldn't require chlorination, chlorination shouldn't be resorted to for drinking water.

Cross-Examination, Questions by Mr. Kessinger

Q. Have you any knowledge, personal knowledge of the manner in which this water is treated at the water company?

A. Well I have no knowledge I can testify to.

Q. Do you know that it has been frequently analyzed by the state board of health?

A. I don't know it if it is so.

Q. Do you know whether or not they have followed instructions of the state board of health in treating the water?

A. I don't know that.

Q. Do you know whether the state board of health has approved the content of that water as they found it as far as health is concerned?

A. I don't know that.

Q. I will ask you this, when you were in the army, did you have any-

thing to do with the water there?

A. Yes, sir.

Q. Did you chlorinate water?

A. It is advisable to in some cases.

Q. Did you?

A. Yes, when we couldn't get it otherwise safe, we chlorinated it.

Q. Chlorinating water is an approved method for certain purposes, isn't it?

A. Yes, sir.

Q. And you chlorinated it in the army?

A. Yes, sir.

Q. You say there is but one good pump that meets your entire approval in the city of Vincennes if I understood you right?

A. Yes, or words to that effect.

Q. That is the pump at the courthouse?

A. Yes.

Q. That has great repute as a good well, don't it?

A. Yes.

Q. Outside of that you are somewhat afraid of these pumps are you?

A. Yes, sir, I am absolutely afraid of them and I won't drink from them myself.

Q. Is that true with respect to these pumps such as have been sunk around here by Doll, some forty or fifty?

A. I don't know anything about the wells personally, I don't know how deep they went.

Q. Say twenty-three or twenty-eight feet.

A. I wouldn't recommend them.

Cross-Examination, Questions by Mr. Jones

Q. You told Mr. Kimmell that you thought an ample supply of water could be obtained from wells, where would you sink those wells?

A. Well, I think there might be some projecting around but I know that an ample supply can be obtained most any place in around here.

Q. How far away?

A. Anywhere from five hundred yards from the river which I think necessary for safety.

Q. How deep would that have to be?

A. I should think they ought to go a hundred feet deep.

Q. What size?

A. Why, I'd size it up and enough of it to furnish an ample supply of water.

Q. Do you know what the maximum water supply of Vincennes is now?

A. No.

Q. You would have to have that information before you could tell the Commission about the wells, wouldn't you?

A. I know there's enough water to be obtained that enough could be obtained.

Q. How much do you think an ample supply would be, how many gallons?

A. I don't know.

Q. Have you any impression about it?

A. No.

Q. How much would that cost?

A. I am not an engineer.

Q. Do you know whether it would be practical or not to go over in the state of Illinois to sink wells of sufficient capacity to furnish the amount of water needed for the city of Vincennes and give it such treatment as

it might require and put in pipes and transport it across the river?

A. I have my private opinion on it.

Q. But you are not an engineer?

A. No.

Q. Do you know what it might add to the cost of water service in Vincennes?

A. No.

Q. You have no knowledge about that?

A. No.

Q. Have you ever analyzed that water over there at a depth of a hundred feet?

A. No.

Q. Do you know what it would contain?

A. No.

Q. You have no idea then of what the mineral content is at that depth, have you?

A. I know from general knowledge of the subject.

Q. You say you have never analyzed any water from a depth of a hundred feet across the river?

A. No.

Q. And you can't tell the Commission the exact character or mineral content of such water as may be obtained at that depth?

A. No.

Q. You can't tell whether the water may have to be treated?

A. No.

Q. You couldn't tell the Commission about the degree of hardness of the water?

A. Well, in my opinion it wouldn't have to be treated.

Q. From that depth over there?

A. That is my opinion based on a general working knowledge.

Q. I didn't ask you that, I am asking what you know, how many wells of what size in your judgment would it take when you tell the Commission an ample supply of water could be gotten over there?

A. I am not going into that.

Q. Then could you say that an ample supply could be obtained or not?

A. I have my own opinion on it.

Q. Do you know whether or not the rights could be obtained to transport that water?

A. No.

Q. Do you know anything about the problem in interstate relations that might be met in transporting that water across the river into different states?

A. No, sir.

Q. Don't you know that the Public Service Commission of Indiana might lose control of the water rates here in the city of Vincennes by that contract?

A. No.

Q. Do you tell me and tell the Commission that the Public Service Commission would have jurisdiction of another state?

A. I don't know about that either.

Cross-Examinations, Questions by Commissioner Ellis

Q. I'd like to ask a question. I understood you to say in response to a question by Mr. Kimmell that from your observation of this water you were pretty well satisfied that they were not treating it properly, have you any suggestions or recommendations to make of the kind of treatment that should be made?

A. I think the Commissioner misunderstood me. I don't think there

is any improbability of the lack of chemicals.

Q. Well, what about that?

A. I think probably that there is an abundant chemicalization of this water which is undesirable and goes toward making an unpalatable water because I can tell the Commission from a military standpoint that chlorination is resorted to just as a means of disease prevention and under circumstances under which it must be resorted to or else the health of the soldier is going to suffer. It is resorted to because pure water which is odorless and tasteless and germ-free cannot otherwise be obtained. Soldiers have to have water like other people, they must have germ-free water, that is the primary question in drinking water as everybody knows. Chlorination in the army is only resorted to in the army as everyone knows the odor of chlorine is offensive and it naturally turns people from drinking as much water as they would drink, and should drink, because they drink in less amounts than they desire, and are healthful to any individual, most people don't drink enough water when they can get good pure water.

Q. You believe that water ought to be obtained from sources that wouldn't require this constant treatment of chemicals?

A. There is only one other alternative, and that is to have a plant equipped with a filter paper or a reservoir of adequate capacity so that if water is let in the reservoir today and have the proper time and conditions for putrefaction process to go on whereby it is in a large measure made pure water. It requires that putrefaction process to make river water good. After that it can go through a filter bed and be practically pure if not entirely so, and normally, under such conditions, it ought not to require chemicalization, that is the only alternative to procure water other than from a source which would obviate that. Am I clear?

Q. Yes sir, thank you.

Re-Cross Examination, Questions by Mr. Jones

Q. Do you know any city in the state of Indiana of the size of Vincennes or larger that does not chlorinate its water supply?

A. I do not.

Re-Direct Examination, Questions by Mr. Kimmell

Q. You don't know of a city anywhere where they put chlorine in the water like they do here?

A. I never did.

Q. You've been all over the country?

A. I've been around some.

Testimony in addition to that discussed above as to the objectionable tastes and odors present in the water furnished by the respondent was given by other witnesses.

Hansen's Recommendations

[1, 2] The respondent employed the firm of Pierce, Greeley & Hansen, Chicago, Illinois, to make certain investigations concerning the water supply furnished by the respondent, after the filing of the petition by the city of Vincennes. This work was under the personal supervision of Mr. Paul Hansen, a member of the firm. Mr. Hansen has a distinguished record as a sanitary engineer and his

expert testimony is entitled to weight in the opinion of the Commission. It should be noted that Mr. Hansen observed the objectionable tastes and odors in the water furnished by the respondent, although he testified that said tastes and odors were not particularly objectionable to him personally.

As a result of the investigation made by Mr. Hansen and his assistant, Mr. Kenneth W. Hill, Mr. Hansen submitted certain recommendations which in his judgment will remove the objectionable tastes and odors from the water furnished by the respondent. He also submitted other recommendations not dealing directly with the question of tastes and odors. The recommendations of Mr. Hansen as shown by the record are as follows:

1. Aerator.
2. Additional means of applying chemicals.
3. Preammoniation.

The details of these recommendations are discussed fully in the record.

Mr. Hansen testified that to conform with all of the recommendations which he had made concerning the plant of the respondent, including those for the removal of tastes and odors present in the water, would cost approximately $50,000. He further testified that about seven months' time would be required to carry out his program. Mr. Benjamin Perk, secretary-treasurer of the respondent, testified that the respondent is ready and willing to make the improvements in its plant recommended by Mr. Hansen.

Obviously, it is the duty of the respondent to furnish a satisfactory product to its patrons, and one which as nearly as possible meets the requirements laid down by physicians for drinking purposes, namely, water which is both odorless and tasteless. Without at this point attempting to pass on the question of the reasonableness of rates charged by the respondent, surely it is evident that the rates paid by the patrons are high enough to warrant the furnishing of a satisfactory product. The Commission will order the respondent immediately to carry out the program for the improvement of its plant and system as outlined by Mr. Hansen, with particular emphasis on his recommendations designed to enable the respondent to remove the noxious tastes and odors from its product.

The time fixed by Mr. Hansen as necessary in order to carry out his program for the improvement of the plant of respondent, namely seven months, appears entirely too long to the Commission. The Commission is advised by its chief engineer that the program outlined by Mr. Hansen reasonably could be expected to be completed at least within five months, and such time will be fixed by the Commission for the respondent to carry out the recommendations made by Mr. Hansen set out above and as shown by the record.

Certificate of Convenience and Necessity

[3] It should be noted that the petition of the city of Vincennes requests in the event said Vincennes Water Supply Company is unwilling to reduce its rates and improve its service as set out, that the Public Service Commission of the state of Indiana be petitioned to grant the said

city of Vincennes a certificate of convenience and necessity permitting said city of Vincennes to construct a municipal water plant. In the opinion of the Commission the existing water utility should be required to make the suggested improvements and given a reasonable time in which to improve the character and quality of its service so as to provide a satisfactory water supply before any action is taken in regard to the request that a certificate be granted to the city for the construction of a second water utility.

Much economic waste would result from duplication of the facilities required to furnish the city of Vincennes with water. However, if the existing utility should prove unwilling or unable to improve the character and quality of its service, then, in the opinion of the Commission, serious consideration should be given to that portion of the city's petition.

Alleged Exorbitant, Unreasonable, and Prohibitive Rates

[4] In addition to the complaint of the patrons against the service furnished by the respondent, serious objection was voiced by patrons of the respondent, and the petitioner city of Vincennes, against the existing schedule of rates and charges for water service. The existing rates of the respondent are now in effect as a result of a judgment of the United States court of appeals for the seventh circuit (P.U.R.1930B, 216) and are based upon a valuation of the property of the respondent of $1,032,064. Inasmuch as the history of the proceedings which resulted in the establishment of the present schedule of rates is set out in full in a petition of the city of Vincennes which will be quoted later in this opinion, no further discussion of this phase of the matter will be necessary here. The existing rates, according to a computation of the accounting staff of the Commission provide a return of 6.39 per cent on the valuation of the property established by the United States circuit court of appeals for the seventh circuit. Under the existing schedule of rates the minimum charge for domestic consumers is $1.60 per month for 400 cubic feet of water. At the time this minimum rate was put into effect the amount of water allowed the consumer under the minimum was decreased by 100 cubic feet. The evidence of some witnesses indicates that the amount of water allowed under the minimum charge is not sufficient to meet the reasonable requirements for water of an average minimum consumer. In addition the evidence indicates that some consumers are fearful of running over the minimum, and, therefore, fail to consume all the water now allowed under the minimum charge. The testimony of the patrons using more than the amount of water allowed under the minimum charge indicates that in many instances application of the present rate schedule resulted in large bills for water service. The result of this situation has been a decided attitude on the part of patrons to use as little water as possible.

Virtually no sprinkling has been done in Vincennes during the past summer, according to the evidence. Vincennes has been in the drouth area of southern Indiana. At a time when the need of patrons of the respondent for water has been more acute than

perhaps at any other time in the history of the city, they felt unable to use the amount of water reasonably required to meet their needs on account of the high charges of the respondent, according to the evidence. The blighting hand of the drouth has had no more injurious effect upon the city of Vincennes than the schedule of rates and charges established by the respondent, according to the testimony submitted.

A little over two years ago public fire protection was provided for the city of Vincennes by the respondent at a rate of $55 per hydrant. This rate was increased by the order of the Public Service Commission approved April 20, 1928, in Cause No. 9036 to $72 per hydrant. Under the authority of the Federal court decree the rate had to be increased to $99 per hydrant, which, according to the evidence, is the highest rate in any fourth class city in the state of Indiana. It should be noted that the schedule of rates now provides for public fire protection on the inch-foot basis but the charges paid by the city of Vincennes, under the schedule, amount to $99 per hydrant, on the basis of the number of hydrants now in use.

City's Exhibit No. 2, which was compiled from records of the tariff department of the Public Service Commission of Indiana shows the following concerning rates for public fire protection in fourth class cities in the state of Indiana as of July 15, 1930:

Bedford—Municipal	
4" pipe with 2½" opening	$45.00
6" pipe with 2½" opening	55.00
Bloomington—Municipal	16.89
Clinton—Municipal	50.00
Columbus—Municipal	50.00
Connersville—Municipal	50.00
Crawfordsville—Private	60.00
Elwood—Private	72.00
Frankfort—Private	45.00
Goshen—Municipal	40.00
Huntington—Municipal	45.00
Jeffersonville—Private	55.00
LaPorte—Municipal	35.75
Lebanon—Municipal	40.00
Mishawaka—Municipal	30.00
Newcastle—Municipal	40.00
Princeton—Private	50.00
Rushville—Muncipal	36.00
Seymour—Private	55.00
Shelbyville—Private	40.00
Valparaiso—Municipal	50.00
Vincennes—Private	
First 5 months 1929	72.00
Since	99.02
Wabash—Private	38.00
Warsaw—Private	60.00
Washington—Private	70.00

There was evidence in the record to the effect that in some instances pressure maintained by the respondent is not adequate for fire-fighting purposes.

Attention was called by the respondent to the alleged favorable rates provided for large industrial consumers. The evidence indicates, however, that many of the largest industries of the city of Vincennes obtain their water from their own wells.

Petition for Appraisal

Following the hearing of evidence, on September 5, 1930, the city of Vincennes, by its mayor and city clerk, filed a supplemental petition in this cause which, omitting the caption and signatures, is as follows:

"The city of Vincennes, hereinafter denominated the 'petitioner,' hereby respectfully petitions your honorable body for a revaluation of the plant and properties of the Vincennes Water Supply Company, hereinafter called the 'water company,' for rate-making purposes, and in support of this petition shows the following facts to wit:

"1. That heretofore, to wit: On

the 20th day of April, 1928, the Public Service Commission of Indiana, after a hearing fixed and established the valuation of said plant and properties for rate-making purposes at and for the sum of $725,000.

"2. That thereafter on the 11th day of July, 1928, the district court of the United States for the southern district of Indiana, after hearing and determining a proceeding brought by said water company to review the aforesaid valuation as fixed by said Public Service Commission, dismissed said cause for want of equity and refused to disturb the aforesaid valuation of $725,000 as theretofore fixed by said Commission.

"3. That thereafter the said water company appealed from said judgment of dismissal for want of equity to the United States circuit court of appeals for the seventh circuit, and that on the 17th day of April, 1929 (P.U.R.1930B, 216) the said United States circuit court of appeals for the seventh circuit made and rendered a judgment and opinion reversing the judgment of the United States district court for the southern district of Indiana in said cause, in which said judgment and opinion the said circuit court of appeals fixed and found the valuation of the property of said water company to be $1,032,064, and further fixed and found that the schedule of rates as ordered by this Commission upon its aforesaid valuation of $725,000 amounted to an unconstitutional confiscation of said water company's property.

"4. The petitioner further shows that thereafter on the 3rd day of September, 1929 (P.U.R.1930B, 216, 224) the said United States circuit court of appeals for the seventh circuit made, rendered, and entered a supplemental opinion in the aforesaid cause wherein said circuit court of appeals found as follows to wit:

" 'It is the intent of this court that though the Commission, acting in its legislative function, must keep in mind the proper return upon utility properties in order to prevent confiscation as heretofore determined by the Supreme Court, the injunction to issue shall not attempt in any wise to control the legislative functions of the Commission in the future, but will enjoin that body only from an enforcement of the schedules of rates complained of. Whether any rates hereafter to be established by the Commission are confiscatory is a question not now before the court.'

"5. The petitioner further shows to your honorable body that on or about the 1st day of July, 1929, the said water company put in effect a schedule of rates as against its consumers and this petitioner, based upon the aforesaid valuation as found, fixed, and determined by the said United States circuit court of appeals for the seventh circuit, and calculated to produce a return in excess of that allowed by law and the rules and regulations of this Commission, upon the valuation of $725,000, as found, fixed, and determined by this Commission on the said 20th day of April, 1928, and that said schedule of rates so put in force by said water company is now in full force and effect against the consumers of said water company.

"6. The petitioner further shows to your honorable body that the valuation of $1,032,064, as found by said United States circuit court of appeals,

and as now used and utilized by said water company for rate-making purposes is unwarranted, excessive, and unreasonable for the following reasons and each of them separately and severally, to wit:

"A. That said valuation was and is based upon conditions heretofore existing, and which do not now obtain; that since said valuation was fixed and determined by said United States circuit court of appeals, there has been a depreciation of costs, and an increase in the purchasing price of a dollar. That said valuation was determined upon conditions existing more than two years ago and that since said time physical properties have depreciated in value and the purchasing value of a dollar is increased so as to make a substantial and material difference in the value of said properties for rate-making purposes.

"B. That since the existing schedule of rates were put into effect by said water company said company has suffered a substantial loss in patronage and consumption, by reason and on account of its service and excessive rates, so that the value of said property as an operating and going concern has been substantially reduced and depleted; that the going value and good will of said property has been reduced and lessened on account of the loss of patronage and consumption to such an extent that the valuation of said property is substantially less than it was when last fixed by this Commission.

"C. That since the value of said property was last fixed and determined by this Commission, and since such valuation was last fixed and determined by said United States circuit court of appeals, the going value of said plant and properties have suffered a depletion and depreciation in this, to wit: That the service rendered and furnished by said water company to its patrons and consumers, including this petitioner, is inadequate, subnormal, and unwholesome; that the quality of the water furnished for domestic use is such that said consumers are unable to use the same and have, in large numbers, been compelled to provide themselves with private sources of water supply, all of which it is calculated to, and does, reduce and depreciate the value of said plant and properties as a going concern.

"D. That the plant and properties of said water company are obsolete, antiquated, out of date, and inadequate to furnish and supply its consumers and patrons with pure wholesome water.

"E. That the water mains of said plant do not meet the standards required by the Underwriters' Association for adequate fire protection and are too small and limited to supply this petitioner with adequate water supply for fire protection; that the fire hydrants with which said system is equipped are out of date and obsolete in this, to wit: That they are not equipped with steamer connections so as to afford this petitioner with adequate fire protection, that the source of supply of said water is unwholesome and impure in this to wit: That raw water is taken from the Wabash river and treated by filtration, and that said plant is not equipped to adequately treat and purify said water so as to render and make the same safe and wholesome.

"F. That one large and substantial item entering into the valuation of said plant is its standpipe, which said standpipe is old, antiquated, and poorly located to render modern and efficient service to the patrons of said water company.

"G. That another large and substantial item entering into the valuation of said plant and property for rate-making purposes is its real estate holdings, upon which is located its pumping equipment. That said pumping equipment is inadequate on account of the location of said plant upon ground that overflows during flood periods.

"H. That since said valuation last fixed by this Commission and by said circuit court of appeals said city has been confronted with flood conditions, and is threatened with a repetition of the same in the future; that said water company has appealed to this petitioner to protect it against flood conditions and that the source of supply of said company has been threatened with contamination on account of said flood conditions, all of which has come to the notice and attention of the Indiana state board of health as being a matter of grave concern, calculated to endanger the lives and health of the people of said community.

"7. The petitioner further shows to the court that the facts and conditions specifically set out in subdivision No. 6 hereof have arisen since the valuation last fixed and determined by this Commission, and since the valuation fixed and determined by the United States circuit court of appeals for the seventh circuit; that by reason of said changed conditions the valuation fixed by this Commission of $725,000 is excessive and that this petitioner is now prepared to show and establish as a matter of fact that the valuation of said plant and properties for rate-making purposes has depreciated and is substantially less than the aforesaid sum of $725,000, to wit: not in excess of $600,000.

"The petitioner further shows that if a hearing is granted on this petition and a revaluation of said property ordered and made for rate-making purposes this petitioner can and will offer conclusive evidence and establish definite facts concerning the physical condition and value of said property which will materially decrease the last valuation fixed by this Commission for rate-making purposes; that this petitioner is now in possession of newly discovered evidence not heretofore presented to this Commission and not presented to the United States circuit court of appeals, with respect to the value of the physical property of said water company and its service, which will materially depreciate the value of said plant, as heretofore fixed by this Commission, and which said newly discovered evidence has never been heretofore heard by or presented to this Commission in any hearing touching the valuation of said property for rate-making purposes, and was not presented to or heard by the United States district court for the southern district of Indiana, or said United States circuit court of appeals for the seventh circuit.

"Wherefore, the petitioner prays your honorable body to order a revaluation and re-appraisement of the

property of said Vincennes Water Supply Company and that this petitioner be granted the opportunity to be heard and present such evidence and facts as will relate to the present value of said property for rate-making purposes.

"The petitioner further prays that said hearing be held in the city of Vincennes in the state of Indiana for the convenience of the petitioner and the patrons and consumers of said water company.

"Dated this 4th day of September, 1930."

On September 23, 1930, there was filed with the Commission a resolution of the common council of the city of Vincennes approving and endorsing the petition for appraisal heretofore referred to. In considering said supplemental petition for an appraisal the Commission calls particular attention to paragraph 4, setting out a supplemental opinion of the United States circuit court of appeals for the seventh circuit emphasizing that the order of said court was concerned only with the schedule of rates established by this Commission in its Order No. 9036, approved April 20, 1928, and the further fact that "whether any rates hereafter to be established by the Commission are confiscatory is a question not before the court."

In view of the evidence already submitted in this cause and in view of the allegations of the petition as to new evidence in regard to the value of this property, not heretofore presented to this Commission, or to the Federal courts, and in view of the allegations as to the change in price levels, the Commission is of the opinion that the petition for a revaluation and reappraisal of the property of the respondent Vincennes Water Supply Company should be granted, and the engineering department of the Commission, therefore, will be ordered and directed to make an appraisal of the property of the respondent.

[5] Pending this investigation and hearing on the question of the present fair value of this property, no adjustment in the schedule of rates and charges of the respondent will be made.

The Commission having considered the evidence introduced in this cause and being fully advised in the premises finds as follows:

1. That the character and quality of the service provided by the respondent Vincennes Water Supply Company is unsatisfactory in that the water furnished the consumers has objectionable tastes and odors.

2. That the respondent Vincennes Water Supply Company should be required to improve the character and quality of its service immediately by following the recommendations made by Witness Hansen, for the removal of said tastes and odors, and as shown by the record in this cause to be as follows:

1. Aerator.

2. Additional means of applying chemicals.

3. Preammoniation.

3. That five months is a reasonable time for the respondent to comply with and carry out the recommendations of said Hansen for the improvement of its plant and system.

4. That consideration of the question of granting a certificate of convenience and necessity to the city of Vincennes for the operation of a

second water utility in said city should be deferred until after the respondent Vincennes Water Supply Company has had a reasonable opportunity to improve the character and quality of its service, and to comply with the order of the Commission in reference thereto.

5. That the supplemental petition of the city of Vincennes filed September 5, 1930, requesting an appraisal of the property of the respondent Vincennes Water Supply Company, should be granted.

6. That consideration of all questions involving the schedule of rates and charges of the respondent Vincennes Water Supply Company should be deferred until after hearing on the present fair value of the property of the respondent for rate-making purposes.

7. That an interlocutory order should be made by the Public Service Commission of Indiana in this cause at this time, and that jurisdiction of this cause should be retained by this Commission for the purpose of making such final order as may be reasonable and proper in the premises.

ALABAMA PUBLIC SERVICE COMMISSION

Re Walter T. Weaver

[Docket No. 6069.]

Monopoly and competition — Long-distance telephone lines.

Authority was granted for the construction of a long-distance telephone line which the Commission found would open up for local and long-distance service a large thickly settled territory which had no telephone service, and in which no service would be profitable without the construction of such long-distance facilities and where the competition that would result to an existing long-distance line would not be appreciable as compared with the public interest so served.

[December 19, 1930.]

APPLICATION *of an individual for a certificate of convenience and necessity to construct and operate a long-distance telephone line; granted.*

APPEARANCES: Walter T. Weaver, for petitioner; T. Barton Baird, Alabama State Manager, and T. E. Harris, District Manager, for intervener.

By the COMMISSION: This cause came on for public hearing after notice to all parties interested before the Commission on the 2nd day of December, 1930, upon application of Walter T. Weaver, filed on the 18th day of November, 1930, for the issuance of a certificate of convenience and necessity for the construction and

rebuilding of certain telephone lines and for the approval of a schedule of rates for telephone service to be rendered over said facilities. Such telephone lines to be constructed and rebuilt being more particularly described as follows:

A. Construction of one new copper circuit from Collinsville via Leesburg to Center.

B. Construction of one new copper circuit from Collinsville via Leesburg to Gadsden.

C. Construction of one new copper circuit from Center via Leesburg to Gadsden.

D. Rebuilding one iron circuit from Center via Leesburg to Gadsden.

E. Rebuilding circuit from Center to Cedar Bluff.

Center, Alabama, the county seat of Cherokee county, is located approximately twenty-three miles northeast of Gadsden, Alabama. Its only means of direct communication to the outside world in a southerly direction are by means of a telephone line from Center via Leesburg to Gadsden. It is necessary for all telegrams and telephone calls to be sent over this telephone line, which is in bad condition, at the present time.

The Commission has had numerous complaints from time to time about the service which is being rendered by the Center Telephone Company, which has heretofore been owned and operated by Mr. M. Brotherton. On April 17, 1930, the Commission issued a citation to Mr. Brotherton, doing business as Center Telephone Company, to show cause why he should not be required to make such improvements, additions, or betterments, in his telephone exchange, lines, or other equipment, as are necessary to enable him to render reasonable and adequate service. Said citation was heard by the Commission at Center, Alabama, on May 5, 1930. At that time a number of complaints which had been received by the Commission about the service being rendered by the Center Telephone Company were made a part of the record and testimony taken about the service which was being rendered and the condition of the physical property.

In its Docket No. 6070 on December 19, 1930, the Commission approved the sale and transfer of the telephone properties operated under the name of Center Telephone Company, and under the name of Murray Cross Telephone Company, from M. Brotherton, owner, to M. G. and Walter T. Weaver, the petitioner in this proceeding. That case was heard on a common record with the present case and the evidence in that case has substantial bearing and relevancy to the issues here and is considered in connection with such issues.

At the hearing in that case, Mr. Walter T. Weaver presented information to the Commission about the improvements which he and M. G. Weaver propose to make if they are allowed to purchase the Center Telephone property. Mr. Weaver stated that it is their intention to put the Center Telephone property in good condition and to do everything necessary to render good local and long-distance telephone service.

Walter T. Weaver and his son, M. G. Weaver, are the present owners of the telephone exchange located at Collinsville in Dekalb county, ap-

proximately fifteen miles northwest of Center.

At the present time, there is no direct telephone service between Center and Collinsville, calls between these towns being handled through Gadsden. The proposed line from Center to Collinsville via Leesburg is almost a direct route and is only slightly longer than the air-line distance between Center and Collinsville.

Petitioner desires to construct a line from Collinsville to Leesburg to carry one circuit from Collinsville via Leesburg to Gadsden and one circuit from Collinsville via Leesburg to Center. Petitioner proposed also to construct certain rural lines which will be located on the proposed pole line, and are to serve important developed rural territory between Collinsville and Leesburg and territory adjacent thereto.

At the hearing in this proceeding on December 2, 1930, the Southern Bell Telephone & Telegraph Company intervened and protested against the granting of permission to construct a toll line from Collinsville via Leesburg to Gadsden, on the grounds that the proposed line would practically parallel its existing telephone line from Gadsden to Collinsville; that such existing toll facilities were adequate, and the construction of the Collinsville-Gadsden line proposed by petitioner would be a needless duplication of facilities and, therefore, contrary to the public interest. The Commission finds that, under the facts of the present case, it is not simply a matter of proposing to build merely a parallel, competitive toll line.

As the Commission understands the position of the Southern Bell Telephone & Telegraph Company, it opposes the construction of the line from Collinsville via Leesburg to Gadsden, and the handling of the Collinsville long-distance business to the south over the proposed facilities proposed by petitioner, instead of over the existing toll line of intervener, but does not oppose the construction of the line from Collinsville via Leesburg to Center, or the reconstruction of the line from Center via Leesburg to Gadsden.

Testimony presented at the hearing shows that the long-distance circuits of intervener between Collinsville and Gadsden are a part of the through long-distance circuits of intervener between Chattanooga, Tennessee, and Gadsden, Alabama, and other points south. The record shows that the circuits handling the long-distance business between Collinsville and Gadsden are not used to serve Collinsville only but are used in common by a number of other towns on the route of the Gadsden-Chattanooga toll line, and that service to these other towns, as well as to Collinsville, is handled over these circuits.

The record also shows that the proposed line of petitioner from Collinsville via Leesburg to Gadsden will be shorter than the existing line of intervener, that it will be of first class construction, and that it will afford a direct circuit between Collinsville and Gadsden.

While said existing line of Southern Bell and the proposed line of petitioner will furnish facilities for handling business from Collinsville to Gadsden, it is the Commission's opinion that petitioner's proposed line is not in a substantial sense competitive, and, in addition, it will open up for local and long-distance telephone service a large

thickly settled territory, which has no telephone service at the present time. The proposed line from Collinsville via Leesburg to Gadsden will enable citizens living in intervening territory to receive telephone service, whereas, if the Commission should deny the petition asking for approval of the construction of the line from Collinsville via Leesburg to Gadsden, there will not be enough business in the territory to justify the construction of the proposed line to serve Collinsville-Center.

The Commission, therefore, after giving careful consideration to all the facts in this case, is of the opinion that the telephone development in this territory cannot be made profitable and, therefore, will not develop unless petitioner be allowed to construct and operate the Collinsville-Gadsden circuit. To deny approval of this line will be to deny to all this territory, including Center, a very much improved telephone service, and to a large area, not now served, any telephone service whatever.

The Commission is further of the opinion that the loss in toll revenue anticipated by intervener by reason of the competitive feature of the Collinsville-Gadsden toll circuit will be in a large measure compensated for by the additional toll revenues that will certainly result by reason of additional business from new territory and the improvement in existing telephone facilities.

The protest of the Southern Bell Telephone & Telegraph Company is, therefore, overruled and the petition of Walter T. Weaver for authority to construct and operate the telephone lines, as described above, is granted.

An appropriate order is herewith issued.

NEW YORK DEPARTMENT OF PUBLIC SERVICE, METROPOLITAN DIVISION (TRANSIT COMMISSION)

City of New York et al.

v.

New York, Westchester & Boston Railway Company

[Case No. 3012.]

Service — Franchise contract — Estoppel — Railway carrier.

1. Aside from the question of whether or not a city has any authority to impose restrictions as to service in a franchise contract, a railway carrier which has, by accepting benefits of the contract without question, acquiesced in all its terms, is thereby estopped at a subsequent date to raise the point, p. 370.

Franchises — Necessity for application for relief under new law.

2. A franchise granted by a municipality, imposing upon a railway carrier certain requirements as to service, remains binding as to all its terms upon both parties until amended either by the legislature or by its duly authorized agent, or by application of either of the parties themselves, regardless of whether or not it may be subject to changes imposed by the subsequent enactment of the state Public Service Commission Law, p. 372.

Service — Jurisdiction of the Commission — Franchise requirements — Railway carrier.

3. The Commission has statutory authority to entertain the complaint of a city against the alleged violation by a carrier of certain provisions of its franchise as to adequate service, and to order the carrier to satisfy such a complaint, p. 372.

[December 15, 1930.]

COMPLAINT *by a municipality against the alleged violation of franchise provisions by a railway carrier; complaint sustained.*

GODLEY, Commissioner: The complainants named above allege that the New York, Westchester & Boston Railway Company is violating the provisions relating to service in the franchise pursuant to which it is operating its railroad in New York city and have requested the Commission to order that company to cease to commit or permit such violations.

The franchise in question is contained in an ordinance adopted by the board of aldermen of the city of New York and approved by the mayor on August 2, 1904. It was granted to and formally accepted on August 11, 1904, by the railway company's predecessor which promised, covenanted, and agreed to conform to, abide by, and perform all the terms, conditions, and requirements contained in the ordinance which included the following:

"*Eighteenth*—The railway company shall operate a train schedule on the main line of at least sixty trains in either direction daily, stopping at all of the stations within the city limits, and at no time either day or night shall there be greater headway between such trains than thirty minutes; provided, however, that said railway company during the first five years after the commencement of the operation of any portion of the railway shall not be required to operate its trains within the city limits between the hours of 1 o'clock and 4 o'clock A. M. each day, unless the board of estimate and apportionment shall determine, after a hearing had thereon, that public convenience requires the operation of its cars during such hours."

The original term of twenty-five years fixed in the franchise having expired in 1929, the grant was extended upon the railway company's application for an additional twenty-five years by a contract duly authorized by the board of estimate and apportionment and entered into between the railway company and the mayor on September 4, 1929, which contract pro-

vided that, except as to the amount of the annual compensation to be paid, "each and every of the terms and conditions of said ordinance of August 2, 1904, as thus modified and amended, shall continue unchanged and shall be binding upon the parties hereto."

On July 28, 1930, without having applied for or obtained a modification of the franchise, the railway company put into effect a schedule of operation which provided daily on week days for only forty northbound trains and thirty-seven southbound trains stopping at all stations within the city of New York and, exclusive of the hours between 1 and 4 A. M., for the operation on a greater headway than thirty minutes of north and southbound trains, stopping at each station within that city.

On September 7, 1930, the railway company put into effect a revised operating schedule which provided daily on week days for only forty-five northbound trains and forty-two southbound trains stopping at each station within New York city and, exclusive of the hours between 1 and 4 A. M., for the operation on a greater headway than thirty minutes of north and southbound trains, stopping at all stations within said city. This schedule is still in effect.

The answer of the railway company admits the foregoing facts, but denies the allegations in the complaints to the effect that prior to July 28, 1930, the service maintained by it was practically and substantially in accordance with the terms of the franchise and that the schedules of train service put into effect on July 28th, and September 7, 1930, violate the franchise requirements. The answer also sets up five separate defenses, three of which involve questions of law only and the other two mixed questions of fact and of law, one of which alleges that the existing train service is "reasonably adequate" and accordingly the Commission is not authorized to order compliance with the franchise provisions and the other alleges that the provisions of the franchise have become inoperative and unenforceable by reason of mutual nonobservance by the parties. No testimony was introduced at the hearing, as all the parties were satisfied to rest upon the pleadings. Briefs and reply briefs have been submitted and considered.

It seems obvious to the Commission that the daily operation of only forty northbound and thirty-seven southbound or of only forty-five northbound and forty-two southbound trains stopping at all the stations within the city of New York violates a provision requiring the railway company to operate a train schedule "of at least sixty trains in either direction daily, stopping at all of the stations within the city limits"; and that the operation of trains on a greater headway than thirty minutes between trains stopping at each station within the city, exclusive of the hours between 1 and 4 A. M., violates a requirement that "at no time either day or night, shall there be greater headway between such trains than thirty minutes."

[1] One of the principal points discussed in the briefs is the authority of the city of New York to impose in the ordinance in question the provision with respect to the train service. The city argues that since § 21 (formerly

§ 11) of the Railroad Law made its consent necessary before the railroad could be lawfully constructed across the city streets, that statute recognized its implied right to impose conditions, and that § 73 of the city charter gives it express power to do so by providing that "every grant of franchise shall make adequate provision by way of forfeiture of the grant or otherwise to secure efficiency of public service at reasonable rates. . . ."

Undoubtedly some judicial authority for the city's right to impose conditions is contained in some of the cases cited in its briefs and especially in the case of People ex rel. Frontier Electric R. Co. v. North Tonawanda (1910) 70 Misc. 91, 126 N. Y. Supp. 186, affd. (1911) 143 App. Div. 955, 128 N. Y. Supp. 1140, where the court was construing § 21 of the Railroad Law. In denying an application by the railroad company for a writ of peremptory mandamus requiring the city to eliminate from its resolution of assent under § 21 certain provisions claimed to be illegal and void, the court, among other things, said:

"The act (§ 21, *supra*) imposes no restrictions on the city. If the city gives its unqualified assent, the Public Service Commission may regulate facilities, rates of fare and conditions of service, and many other matters; but the legislature vests in the municipality, in the first instance, power to refuse its assent, and that necessarily implies the power to impose conditions. True the relator derives its right to cross the streets from the state, but it takes this right subject to the condition of obtaining the assent of the municipality. (Delaware, L. & W. R. Co. v. Buffalo (1892) 65 Hun, 464, 20 N. Y. Supp. 448.)" (*Supra*, at p. 93 of 70 Misc.).

The railway company contends that the city of New York had no right or power to insert provisions in the franchise relating to train service and that accordingly said provisions are without authority of law, invalid, and not binding upon either the railway company or the Commission, but it accepted the consent with these provisions in it and has been operating under that permission ever since. It will not now be heard, while retaining the benefits of the contract to dispute its validity. Farnsworth v. Boro Oil & Gas Co. (1915) 216 N. Y. 40, 109 N. E. 860.

Indeed, the appellate division intimated as much in People ex rel. New York, W. & B. R. Co. v. Public Service Commission, 193 App. Div. 445, P.U.R.1920F, 795, 183 N. Y. Supp. 473, affd. (1921) 230 N. Y. 604, 130 N. E. 911, on which case chief reliance is placed by the railway company for its present contentions. In that case Mr. Justice Laughlin, writing for the court, said, at p. 802 of P.U.R.1920F:

"On the contrary, it formally accepted all the terms and conditions of the ordinance, and down to the present time has acquiesced therein, and doubtless it should not now be heard, in its own right, to question the validity of the provisions of the ordinance as binding it until it is relieved therefrom. (Rochester Teleph. Co. v. Ross (1908) 125 App. Div. 76, 109 N. Y. Supp. 381, affd. (1909) 195 N. Y. 429, 88 N. E. 793; Pond v. New Rochelle Water Co. (1906) 183 N. Y. 330, 76 N. E. 211, 1 L.R.A.(N.S.) 958, 5 Ann. Cas. 504; Buffalo v.

Frontier Teleph. Co. (1911) 203 N. Y. 589, 96 N. E. 1112."

[2] The railway company also contends that the contract is subject to the reserved power of the state as delegated to the Transit Commission to regulate the service and that, therefore, it is incumbent upon the city to show that the service is not reasonable. The consent was, of course, granted prior to the enactment of the Public Service Commission Law, so that it is open to question whether or not these provisions of the franchise are subject to change under the legislative delegation of power. But assuming for the purpose of the argument that it is so subject, the requirement has not been changed nor has there been any application by the railway company to change it and until it is amended either by the legislature or its duly designated agent or by the parties themselves, it remains binding.

[3] The railway company also argues that the Commission has no power to enforce the provisions of the franchise.

The present proceeding is not one instituted upon the Commission's motion or upon a complaint as to the adequacy of the existing service under subdivision 2 of § 49 or under § 51 of the Public Service Law, but is upon complaints made under subdivision 2 of § 48 of that law which clearly authorizes complaints to be made to this Commission against railroad corporations or street railroad corporations for acts or omissions "in violation, or claimed to be in violation, of any provision of law or of the terms and conditions of its franchise or charter or of any order of the Commission." Following the investigation which it is authorized to make, the Commission shall take "such action within its powers as the facts justify," (§ 48, subdivision 2) and it is its duty "to make and file an order either dismissing the petition or complaint or directing the common carrier, railroad corporation, or street railroad corporation complained of to satisfy the cause of complaint in whole or to the extent which the Commission may specify and require." (§ 48, subdivision 3).

The Commission has investigated and has decided that the railway company has violated and is violating the provisions as to train service contained in its franchise from the city of New York. Where there is a violation of a franchise, the Commission can order a cessation of such violation under § 48. Willcox v. Richmond Light & R. Co. (1910) 142 App. Div. 44, 128 N. Y. Supp. 266, affd. (1911) 202 N. Y. 515, 95 N. E. 1141.

It is my opinion that the Commission should order the railway company to comply with the franchise provisions, with respect to train service in New York city, which it voluntarily assumed and the validity of which it is now estopped from questioning.

Re Fulton Petroleum Corporation

[Application No. 1557, Decision No. 3157.]

Certificates — Commission jurisdiction — Supply line for home rule cities.

1. The state Commission has no jurisdiction to entertain an application for a certificate of convenience and necessity for the construction of a natural gas pipe line which, although situated outside of a home rule city, is intended for the sole purpose of furnishing service to the inhabitants of the latter, which had granted a franchise to the applicant for such service, p. 378.

Certificates — Home rule cities — Prejudgment of outside service.

2. The Commission will not issue or refuse in advance a certificate of convenience and necessity to a utility which has authority to serve within the municipal limits of a home rule city that will affect the subsequent activity of the utility immediately outside of such boundaries, p. 380.

Certificates — Reasons for refusing — Financial responsibility.

3. An application by a natural gas pipe line carrier for a certificate of convenience and necessity to serve certain territory was denied in the absence of a showing of financial responsibility, and where evidence did show in fact that the applicant had no sufficient funds to finance its program nor any definite plan for obtaining the same, p. 380.

Certificates — Financial responsibility — Interest of the investing public.

4. The Commission refused to issue a certificate of convenience and necessity for the construction of a natural gas utility project, which would be dependent upon the problematical commercial success of a process for manufacturing dry ice, a by-product of carbon dioxide, where such action might be relied upon by the public in purchasing securities to finance construction and possible experiments, p. 380.

Statutes — Effect of Federal statute on state Commission jurisdiction.

5. A Federal act requiring that rights of way through public lands shall be granted only to qualified common carriers cannot have the effect of imposing upon a state Commission the duty of entertaining jurisdiction for the purpose of qualifying a particular common carrier, when the Commission is not permitted to exercise such jurisdiction by the laws of its own state, p. 382.

(Bock, Commissioner, dissents.)

[December 10, 1930.]

APPLICATION *for a certificate of convenience and necessity to construct and operate a natural gas pipe line; denied for failure to show financial responsibility, but jurisdiction retained for further proceedings.*

APPEARANCES: George D. Parkinson, Salt Lake City, Utah, and Burgess & Adams, Grand Junction, attorneys for applicant; James R. Jones and J. G. Scott, Denver, for protestant Argo Oil Company; Tupper, Smith & Holmes, Grand Junction, for protestant Southern Union Gas Company.

By the COMMISSION: The applicant, Fulton Petroleum Corporation, has obtained from the city of Grand Junction a franchise for the distribution in said city of gas to be piped from a structure known as Garmesa, situated some twenty-seven miles northwest of that city. Said structure is a proven gas field.

The applicant proposes to serve a number of towns and communities in the Grand Junction district, including the towns of Fruita, Clifton, and Palisade, and the territory intermediate to Grand Junction and Fruita. Fruita is west of Grand Junction, the towns of Clifton and Palisade east. The town of Fruita also has granted a franchise to the applicant. Grand Junction is a home rule city having legislative powers granted by Article XX of the Constitution of Colorado. Fruita is not a home rule city.

The application alleges that the applicant, "with its connections and associates, is financially able to carry out the program of construction and service hereinbefore proposed, and is financially able to furnish additional facilities or extensions of service as the requirements of public and private consumers may demand."

It further alleges that the present and future convenience and necessity of the communities proposed to be served require the construction of the system and the rendering of the service herein proposed.

The application concludes with a prayer "for the issuance to it of a certificate of convenience and necessity for the service herein proposed, and for such other and further award and relief as may be lawful and just in the premises."

Two protestants vigorously opposed the application, one being Southern Union Gas Company and the other Argo Oil Company. The points made generally by the protestants are that the supply of natural gas in the Garmesa structure is inadequate as to quantity and unsatisfactory as to quality; that the applicant has not shown itself to be capable financially of performing its proposed undertaking or of fulfilling its duty to the public should a certificate be granted to it. Protestants further allege that if the public convenience and necessity should require the furnishing of natural gas to the communities in question, they are in a better position to render that service than the applicant.

A representative of Southern Union Gas Company testified that his company, while it does not have a firm commitment, does have a tentative agreement under and by which it may secure natural gas from the Piceance structure; that the company was then about to receive a franchise from the town of Rifle, under which it would distribute natural gas in said town to be brought from said structure. He testified that the B.T.U. content of the Piceance gas is higher than the Garmesa gas. The distance between the Piceance field and Grand Junction is 85 miles, between the field and Rifle

32 miles. The Southern Union Company would not construct a pipe line through or around Grand Junction in order to serve the town of Fruita if it should not serve Grand Junction also. If it cannot procure a franchise to serve Grand Junction, it is almost certain it would not desire to bring gas from the Piceance field to serve Clifton and Palisade and the other communities outside of Grand Junction.

Argo Oil Company states that it is the holder of large acreages on both the Highline and the Piceance structures, the former being situated near the Garmesa structure in Mesa county. No gas has been discovered in the Highline. A subsidiary of the Argo Company has spent some $65,000 in development work in the Piceance structure, finding some gas comparatively free of carbon dioxide and with a heating value of some 905 B.T.U. The Argo Company itself has spent some $65,000 in development work on the Highline structure, although no gas has yet been discovered. It appears that further work will proceed on both structures.

The Garmesa structure has had a rather interesting history. Some four companies drilled on the structure, or what was thought to be the structure, before the applicant herein came on the scene. Those companies are Carter Oil Company, Midwest Refining Company, Sun Oil Company, and Gypsy Oil Company. Both of the two latter companies discovered gas. The wells of these two companies were about 3,000 feet apart. The Sun Company discovered gas at a depth of about 2,860 feet, the Gypsy Company later finding gas in the same sand and in two lower sands. Both of these companies plugged their wells and abandoned them. The applicant herein then drilled a well which is within about 1,000 feet of the Gypsy well and is substantially, although not exactly, between it and the Sun well.

A large part of the contents of the gas in the three sands is carbon dioxide, and inert noncombustible gas. According to testimony for the applicant, the gas in the first sand contains about 20 per cent of carbon dioxide and 10 per cent of nitrogen, which also is a noncombustible gas, that in the second sand 51½ per cent of carbon dioxide and 13 per cent of nitrogen, and that in the third sand about 58 per cent of carbon dioxide and 13 per cent of nitrogen. It was estimated that the flow of gas per day in cubic feet from the three sands, one to three, respectively, is 18,000,000, 17,000,000 and 40,000,000, and that there is a sufficient supply of fuel gas after all but some 10 per cent of the carbon dioxide is removed to furnish 10,000,000 cubic feet per day for twenty-five years or 5,000,000 cubic feet per day for fifty years.

The evidence of the protestants as to the ingredients of the gases in the various sands does not show variances of great importance. A geologist by the name of Westby was instructed by Empire Gas and Fuel Company to, and he did, make an examination of the Germesa structure, and made a report based thereon. This report made before the applicant became interested is deemed by the Commission of considerable importance, as the Empire Company evidently was then considering developing the field. In his conclusion Westby states. "At 2,632 feet

2,000,000 feet of gas per day was developed. At 2,657 feet the flow increased to 5,000,000 but after flowing for twenty-four hours brought in salt water at 10 barrels an hour. Shows of gas of no importance were found above this horizon in the Dakota. Fresh water was discovered in the top of the La Plata formation at a depth of 3,210 feet." He further stated in his conclusions and recommendations, "The Garmesa Anticline has been estimated to contain about five billion cubic feet of gas, a supply which would last about twenty-seven years at a consumption rate of 500,000 cubic feet per day." He recommended the drilling of two more wells at points removed from the Gypsy and Sun wells in order "to make certain of the gas content of the structure." He pointed out that the open flowing of the Gypsy well had substantially dissipated the total estimated reserve of the gas. A witness for applicant admitted salt water came up with the gas from the second sand.

It is apparent that since the three wells drilled by the Gypsy, the Sun, and the applicant herein are in such close proximity to each other, geologists can only make rather unsatisfactory estimates and cannot determine with any certainty the amount of gas available. There was much detailed evidence about various possible methods of extracting the carbon dioxide, which after extraction it is proposed to use in the manufacture of dry ice. The nitrogen in the gas cannot be removed on any commercial or practical basis. The content of the gas after the carbon dioxide is removed will contain a much larger percentage of nitrogen than was contained in the gas before such separation of the carbon dioxide.

A learned chemist by the name of Christensen discussed at some length the various processes for separating the carbon dioxide. That the carbon dioxide can be separated we have no doubt. The cost of constructing a plant of sufficient capacity to make such separation as will be necessary is a matter about which we have considerable doubt. One corporation has stated that the installation cost of such a plant employing what is called the Girdler process, which would remove practically all the carbon dioxide from 2,000,000 cubic feet of gas per day containing 20 per cent of carbon dioxide and flowing at a pressure of 300 pounds per square inch, would be $27,500. It offered to guarantee that such a plant would remove carbon dioxide down to a concentration of not more than one per cent by volume. The fact is, however, that there is, according to the evidence, no separation of carbon dioxide being made anywhere at the present time on a commercial basis. Plans concerning the sale of dry ice to be made from the carbon dioxide are in, what appear to us, an immature state. The applicant gave no definite information about the sale of dry ice, although questioned on the point. Whether the government will permit the separation of the gas unless the carbon dioxide can be used for useful purposes is doubtful.

During the first hearing herein held on July 24th and 25th, one of the Commissioners asked this question, "You will introduce a financial statement of the company will you, as of some recent date?" The witness on the stand at the time, Frank Goodwin,

a director of First Seattle Dexter National Bank and the vice president of the applicant, answered "We haven't made up our financial statement to the present time; what we make up now isn't reflective of the actual condition in this case; we have assets that we are ourselves aware are worth a great deal of money; we expect to demonstrate those assets and are demonstrating them at this time, and have made a sort of a demonstration in Utah that will reflect more nearly what these companies are worth, and we don't want to have the record appear in Bradstreet's or Dun's, or publish it generally, from the fact that we want the showing to come when our assets are in evidence to anyone." The Commissioner then stated, "It is the practice of the Commission in all such cases, motor vehicle, utility, and others, to require financial statements of those who propose to serve the public, and we would like to have it in this case." One of the attorneys for the applicant then answered, "If we don't make sufficient showing along that line without it we will certainly do it." The second hearing was fixed at a time that would permit Mr. Fulton, the president of the applicant, to be present. We assumed at that time that a financial statement would be forthcoming and some definite evidence given as to the method of financing the proposed developments. However, no witness testified at that hearing for the applicant.

The evidence given by Frank Goodwin at the first hearing showed that five persons, Fulton, the president of the company, Frank Goodwin, Arthur Goodwin, and Joseph Esonal, hold a controlling interest in the applicant, and that their combined wealth or assets amount to at least two million dollars; that there are other wealthy stockholders and that eight or ten of them are probably worth ten or fifteen million dollars. The applicant has some fifteen oil wells with a production of about 250 barrels a day.

Goodwin further testified they estimate that a 30-ton capacity dry ice plant would cost in the neighborhood of $70,000; that a purifying plant will cost $15,000, the distribution systems in Grand Junction and Fruita $125,000 and $10,000 respectively; that while the application alleged the transmission pipe line would cost $10,000 a mile (or a total of $270,000) "Temporarily we will probably put in a 4-inch line from the well to Fruita, which will cost about $3,000 a mile."

The company had in July liquid assets consisting of cash and oil amounting to about $65,000. Only three or four thousand of the total of 250,000 shares with a par value of $1 each, had not been issued. Goodwin testified that "There is an agreement between the majority stockholders to increase the capitalization of this company to provide for our future needs." He later testified concerning the financing to be employed, "As I have stated, the majority stockholders have agreed to an increase in stock when it is necessary, when the time of financing comes along, or we have other plans of bonding the proposition; there are no bonds or mortgages on the property now, or we may take it up among the stockholders of our company alone and finance it that way," and that the plan they "intend to follow has not yet been definitely determined."

[1] The position taken by the applicant at the hearings and in its brief is shown by the following statement contained in the brief: "The applicant has indicated that it intends going ahead with its program to bring natural gas to Grand Junction, regardless of the action of the Commission upon this application." Applicant states in its brief what authority it seeks from the Commission. We quote from the brief: "We refer to these cases so that the real issue before the Commission, which is whether or not it should grant a certificate of public convenience and necessity to the applicant to supply the town of Fruita and the intervening territory between Fruita and Grand Junction, may not be obscured. So much evidence was submitted to the Commission on collateral matters that the real issue may be lost sight of unless it is firmly kept in mind." It is admitted in applicant's brief that so far as the towns of Clifton and Palisade, which lie east of Grand Junction, are concerned, ". . . no evidence was introduced in support of that part of the petition."

If the applicant has authority under the law without any certificate of convenience and necessity from this Commission to construct the separation plant near the well or wells, and the pipe line from the structure to Grand Junction, and it intends, as it says, to do such construction even though no certificate is granted herein, the question arises whether the Commission at this time should either issue or deny the certificate sought. As we understand the facts, the transmission pipe line and separation plant will probably be of the same size and capacity without authority to serve any of the territory outside of Grand Junction as it would be with such authority.

The city of Loveland was pursuing plans for the construction of a hydro plant on the Big Thompson river some miles from the city limits for the purpose of developing electric energy to be distributed in said city. This Commission brought suit in the name of the people to enjoin the city from proceeding, "alleging in its complaint that a certificate authorizing such construction had been refused by the Commission and that it had directed the city not to begin work upon the same." The supreme court of Colorado held in People ex rel. Public Utilities Commission v. Loveland (1924) 76 Colo. 188, P.U.R.1925B, 512, 514, 230 Pac. 399, that the construction and operation of said plant was a matter over which we had no jurisdiction. The supreme court in that case said, concerning § 35 of Article V of the Constitution, "that any attempt by the Commission 'to interfere with any municipal improvement, money, property, or effects' was prohibited. An attempt by the legislature to grant the Utilities Commission any power which it is thus prohibited from exercising is futile." The argument is made that while under § 35 of Article V a municipality in order to serve its own people may go outside of its city limits and construct its power plant and a transmission line therefrom, yet under Article XX, § 6, of the Constitution, granting to a municipality "all other powers necessary, requisite, or proper for the government and administration of its local and municipal matters," a home rule city may not, in the exercise of its broad powers, secure service of its citizens by a private-

ly owned utility without a certificate of public convenience and necessity from this Commission if by chance the power plant or transmission line is situated over and beyond the municipal limits.

The supreme court in the case of Denver v. Mountain States Teleph. & Teleg. Co. (1919) 67 Colo. 225, P.U.R.1920A, 238, 243, 184 Pac. 604, speaking of the language just quoted from Article XX of the Constitution, said: "Could language be stronger? Clearly this is an express grant of full and complete power of local self-government. It necessarily includes the power, whether of eminent domain, taxation, or police, necessary to modern, progressive, and efficient local self-government. Indeed, the growth of cities has been the productive force broadening and extending the police power. It is indispensable to self-government in all our municipalities. In fact, it is the very soul and spirit thereof."

If it should be held that a privately owned utility serving a home rule city may not, although authorized by a franchise from said city, construct a plant or distribution line or do any other construction work outside of the city limits for the sole purpose of serving consumers therein, then this power which has been referred to as being so "full and complete" is really not inadequate to permit of unrestrained local self-government. What difference does it make to the people of the state whether the money spent in the construction of a power plant and pipe line to be used solely to serve consumers within a home rule city is expended within or without the city limits? As we view the matter it is of no concern to anybody except the consumers in the city. We cannot find any method of reasoning by which we can conclude that a municipality itself may expend money on its utility outside of the city and a privately owned utility serving a home rule city may not do the same thing.

It is argued by the attorneys for Argo Oil Company that even though any particular construction work is done for the sole purpose of serving consumers within a home rule city and, therefore, is a matter of concern to such local consumers only, the question is one of territory; that any activity of a utility serving a home rule city which by chance happens to be over the line of the city limits is within the jurisdiction and control of this Commission, because it has jurisdiction over the territory outside of the city. In view of the language quoted above that a home rule city "and the citizens thereof, shall have . . . all other powers necessary, requisite, or proper for the government and administration of its local and municipal matters," and the language of Article XX, § 6, that "Such charter and the ordinances made pursuant thereto in such matters shall supersede within the territorial limits and *other jurisdiction* of said city or town any law of the state in conflict therewith," and in view also of the decision of the supreme court in the Mountain States Telephone and Telegraph Company Case, *supra*, at p. 245 of P.U.R. 1920A, that "The police power to control public utilities need not be granted or invested in a subordinate agency in express words," we are unable to agree with the contention made. Cooley on Const. Limitations is quoted in

the case last cited to the effect that "Narrow and technical reasoning is misplaced when it is brought to bear upon an instrument framed by the people themselves. . . ." (*Supra,* at p. 240 of P.U.R.1920A.)

In Lamar v. Wiley (1926) 80 Colo. 18, P.U.R.1927A, 175, 179, 248 Pac. 1009, the court says that: "The same fundamental reason that operated to control the decision in the Holyoke Case [75 Colo. 286, P.U.R.1924E, 322, 226 Pac. 158] under the facts of that case, makes inapplicable the rule there applied to the state of facts here, which invoke a different rule." The fundamental reason why the supreme court held in the Holyoke Case that this Commission had no jurisdiction over the rates charged by a municipality to consumers therein was that the matter was one of purely local concern, which the voters in said town had power to control. The fundamental reason why that court held that this court did have jurisdiction in the Lamar Case, *supra,* was that the matter of rates charged by a municipally owned utility to consumers living outside of the city is one in which those outside of the city are concerned and need some protection. Bringing the "same fundamental reason" to bear in this case we find that the pipe line, separation plant, and possibly other works are matters in which the consumers of Grand Junction alone are concerned unless and until authority should be granted to use them in serving consumers outside of said city. We are of the opinion that since there is no reason why this Commission should control the construction and operation of a public utility's works situated outside of a home rule city when used solely for the purpose of serving said city, explicit and compelling language would have to be found to lead us to the conclusion which reason forbids we reach. We, therefore, agree with the contention of the applicant herein that it has authority without any certificate from this Commission to construct a pipe line, separation plants, and any other works to be used for the purpose of conveying gas to Grand Junction only.

[2] It might be argued that since the transmission pipe line and other works might later be used in serving territory outside of Grand Junction, we should at this time either grant or refuse a certificate to build them. The same argument could be made with respect to a municipal project or works constructed within the limits of a home rule city by a privately owned utility.

It is the desire of this Commission not to meddle with affairs over which it has no jurisdiction. It is our desire also to do nothing that will prevent the carrying out of the purposes and desires of a home rule city. The matter of "keeping hands off" of the Grand Junction situation is one thing, the granting of a certificate of public convenience and necessity herein authorizing the exercise of franchise rights in Fruita and the service of consumers in that town and the territory intermediate to it and Grand Junction is another.

[3, 4] The Commission was quite surprised when at the second hearing no evidence whatever was offered as to the financial condition of the applicant, or the plans for financing the contemplated developments. One of the most elementary principles of util-

ity regulation is that a utility desiring a certificate of public convenience and necessity should make ample proof of financial responsibility. In this application it was shown very clearly that the applicant has not sufficient funds to finance its program, and we were told frankly that it has not been decided whether the directors, the stockholders generally, or the public would be called upon for the money.

In the case of Re Wilcox (Idaho) P.U.R.1916C, 35, 37, it appears that one Jones desired a certificate of public convenience and necessity to construct a gas plant in the city of Idaho Falls, Idaho. The Commission said: "The whole plan or scheme of applicant Jones seemed to be, as we gathered from the evidence adduced, that he would secure a certificate of convenience and necessity, thereby securing the control of that field for a time at least, and then endeavor to secure the necessary capital, either by subscription or by bonding the plant, with which to construct the plant and distribution system. He presented no definite, tangible plan of procedure but trusted to the future to take care of itself. In other words, it appeared that he was acting purely as a promoter." We do not mean to intimate that the applicant company is a promoter, but its plan is rather similar to that of Jones in the Wilcox Case.

In the case of Re Niagara R. & E. R. Co. (1916) P.U.R.1917A, 278, 286, the New York Commission said concerning the matter of financing the construction of a proposed railroad, that while the proof did "not reflect upon the financial ability or good faith of any of the gentlemen referred to," their ability to finance the construction of the railroad is not shown by mere statements of men of responsibility that "when necessary consents from public authorities are obtained, I shall assist as far as possible in the financing of the proposition," and that "our associates . . . will be prepared to carry our share of the cost."

The California Commission said, in Re United Stages (1924) P.U.R. 1925A, 688, 693: "In considering the granting of certificates of public convenience and necessity, it is the policy of the Railroad Commission to require evidence of the financial ability and responsibility of the applicant commensurate with the character and extent of the operations proposed."

In Re Chicago, F. L. & N. E. R. Co. P.U.R.1918E, 470, 473, the Illinois Public Utilities Commission stated: "The construction in this country of a suspended monorail railroad as proposed by the petitioner is in the nature of an experiment; at least its practicability has yet to be determined; and the petitioner should not be permitted to construct a railroad of this kind with money derived entirely from the sale of bonds."

Other cases to somewhat the same general effect are: Re Sposito (Cal.) P.U.R.1922E, 535; Re Gulick (Cal.) P.U.R.1925E, 359; Re Pacific Pub. Service Corp. (Cal. 1917) P.U.R. 1918A, 497; Re Universal Bus Line Co. (Ill. 1922) P.U.R.1923B, 90; Re Ritter (Ill.) P.U.R.1923B, 530; Re Chicago & Joliet Transp. Co. (Ill.) P.U.R.1928E, 481.

If the Commission were sure that the officers and directors of the applicant were going to use their own funds and that the public would not be called

upon to purchase bonds or stock to finance the contemplated developments, we believe we would have no hesitancy in issuing the certificate herein. However, in view of the testimony of Goodwin, there is no certainty how the funds are to be raised. It is quite clear that the corporation itself does not have available more than enough money to make a mere start. As we have said, we have no doubt that it is possible to make the separation of the carbon dioxide, but in view of the fact that no commercial plant is known to be making the extraction, and of the further fact that the plans for the manufacture and sale of dry ice from the carbon dioxide apparently are not perfected, we do not believe that we should at this time take any action which may be relied upon by the public in purchasing securities to finance construction and possible experiments. We do not mean for a moment to say that the applicant may not on a practical commercial basis be able to make the separation of gases and to manufacture and profitably sell the dry ice and render efficient service in the distribution of the fuel gas. However, with all due respect for the conclusions reached by the city of Grand Junction, we are not at this time entirely satisfied that the venture is or will be a success.

[5] It is urged by the attorneys for the protestant Argo Oil Company that since it is necessary in constructing the pipe line from the Garmesa structure to Grand Junction to cross the public domain, we must assume jurisdiction over such construction because otherwise the applicant will not be able to get the necessary authority from the government to cross the land. Section 28, Chap. 85, of the Act of February 25, 1920; 41 Stat; provides *inter alia:*

"Rights of Way for Pipe Lines. Rights of way through the public lands, including the national forests of the United States are granted for pipe line purposes for the transportation of oil or natural gas to any applicant possessing the qualifications provided in § 181 of this title, to the extent of the ground occupied by the said pipe line and 25 feet on each side of the same under such regulations as to survey, location, application, and use as may be prescribed by the Secretary of the Interior and upon the express condition that such pipe lines shall be constructed, operated, and maintained as common carriers. The government shall in express terms reserve and shall provide in every lease of oil lands hereunder that the lessee, assignee, or beneficiary, if owner, or operator or owner of a controlling interest in any pipe line or of any company operating the same which may be operated accessible to the oil derived from lands under such lease, shall at reasonable rates and without discrimination accept and convey the oil of the government of any citizen or company not the owner of any pipe line, operating a lease or purchasing gas or oil under the provisions of §§ 181 to 194, 201 to 208, 211 to 214, 221, 223 to 229, 241, 251, and 261 to 263 of this title. No right of way shall be granted over said lands for the transportation of oil or natural gas except under and subject to the provisions, limitations, and conditions of this section."

Since it is thought that one complying with this Federal statute must become a common carrier, several applications have been filed with this Com-

mission seeking certificates of public convenience and necessity to operate oil pipe lines as common carriers. We may observe that if the government in its grant or lease of a right of way conditions the rights therein granted upon the requirement that the pipe line "shall be constructed, operated, and maintained as a common carrier," and the applicant herein desires a certificate to carry for others, including the government, the gas that might conceivably belong to them, we might grant such a certificate, but it would not necessarily carry authority to the applicant herein to distribute gas in Fruita and the territory between that town and Grand Junction, which is quite a different thing. Moreover, it goes without saying that while this Commission is glad to take any reasonable action necessary to accommodate the public and those serving it, the Federal act in question cannot confer upon us duties which, under the law of Colorado, we do not have power to perform.

If the applicant proves that it can successfully make the separation of gases and distribution of the fuel gas in Grand Junction, it would appear that such other neighboring communities, including the town of Fruita, as desire the service of the applicant should promptly receive it. We shall then be ready promptly and sympathetically to consider their needs. In the meantime the applicant will not be prevented by the Commission from going ahead and serving consumers in Grand Junction.

Jurisdiction of the application herein is retained by the Commission for such further proceedings and orders as may be proper with respect to service desired to be rendered by applicant in towns and territory other than Grand Junction.

Bock, Chairman, dissenting: I regret exceedingly that I am unable to agree with my colleagues in the disposition of this application. I concur with the statements contained in the majority opinion relative to the requirement of a showing of financial responsibility. That no showing of financial responsibility was made is clear from the record and from the statements contained in the majority opinion. It is, therefore, not necessary to make any further reference to this matter.

In my opinion, the record would also sustain a finding that the Garmesa structure is inadequate as to quantity and unsatisfactory as to quality of natural gas. The majority opinion goes into that matter in detail, and a careful study of this opinion would indicate that this is also the viewpoint of the majority. This project in order to assure adequate service is tied in with the proposed separation of carbon dioxide from the gas, and the record is clear that at present no separation of carbon dioxide is being made on a commercial basis.

This dissent is mainly directed to the proposition contained in the majority opinion that this Commission has no jurisdiction over the construction, operation, and maintenance of a pipe line from Garmesa structure to Grand Junction in a territory which is outside of the municipal area of Grand Junction.

It is admitted in applicant's brief that so far as the distribution of gas

in the towns of Clifton and Palisade and intervening territory which lie east of Grand Junction, "no evidence was introduced in support of that part of the petition." That leaves for our disposition in this application the town of Fruita and the intermediate territory between Fruita and Grand Junction and any territory adjoining the pipe line to be constructed from the Garmesa structure. It is contended that the applicant does not require any authority from this Commission to construct a pipe line for the transmission of natural gas to Grand Junction, a home rule city, for distribution there to consumers. In fact, the applicant said in its brief that it intends going ahead with its program to bring natural gas to Grand Junction regardless of the action of the Commission upon its application. If the applicant has authority under the law, without any certificate of public convenience and necessity from this Commission, to construct the pipe line from the Garmesa structure to Grand Junction and a separation plant nearby the well or wells, and it intends as it says to do such construction work even though no certificate is granted herein, the question arises whether the Commission should at this time either deny or grant the certificate sought. As I understand the facts, the pipe line to be constructed for the transmission of the gas and the separation plant will probably be of the same size and capacity without authority to serve any of the territory outside of Grand Junction as it would be with such authority. Upon the record as made, the question of our jurisdiction over the construction of this pipe line from the Garmesa structure to Grand Junction is, therefore, squarely before us.

In People ex rel. Public Utilities Commission v. Loveland (1924) 76 Colo. 188, P.U.R.1925B, 512, 230 Pac. 399, the supreme court of this state had before it as one of the issues the construction and operation of a plant outside of the municipal area to generate electric energy by the municipality of Loveland, which distributes this energy within its municipal area. The supreme court in that case decided that the construction and operation of this plant was a matter over which our Commission had no jurisdiction solely because of certain language in § 35 of Article V of the Constitution of Colorado. This section reads as follows:

"The general assembly shall not delegate to any special commission, private corporation, or association, any power to make, supervise, or interfere with any municipal improvement, money, property, or effects, whether held in trust or otherwise, or to levy taxes or perform any municipal functions whatever."

As will be readily understood from the reading of this section, this section prohibits the legislative department from delegating power to a special commission over any municipal function. It purely relates to matters of municipal government and our supreme court has never construed this section in such a way as to apply it to a private utility operating in a home rule city. If § 35 applies to any private utility operating in any municipality, then this Commission has assumed jurisdiction over considerable territory to which Article XX of the Constitution does not apply.

The case of Holyoke v. Smith, 75 Colo. 286, P.U.R.1924E, 322, 331, 226 Pac. 158, was the first instance in which our supreme court defined § 35 of Article V of the Constitution and applied it solely to municipally operated utilities. In that case the court said:

"Where the people are dealing with a privately owned public utility, the situation is quite different, and there is good reason for a Commission which shall act in the interest of the public, to avoid the possibility of oppression. . . ."

It appears to be absolutely clear from the opinions by the supreme court in construing § 35 of Article V, *supra,* that the language therein is not applicable to any private utility operated within a municipality.

It is contended that under Article XX of the Constitution, our Commission has no jurisdiction over any plant, transmission line, or pipe line constructed outside of a municipal area which serves a private utility operating in a home rule city. Our supreme court has several times construed Article XX of the Constitution. I am unable to find any language of the supreme court from which it may be said that our jurisdiction has been adversely affected in a situation as described above. Practically every one of these cases deals solely with the regulation of rates charged to the consumer within the municipal area of a home rule city. We are an administrative body and until the courts have judicially determined otherwise, our primary function is to administer the law as we find it. We may sympathize with the predicament of the legal limitations of a home rule city and prefer to keep "hands off," but since when is that a reason to disregard the plain mandate of the Public Utilities Act? Until the courts have expressly held that our jurisdiction over pipe line construction does not apply to the facts before us, we have no choice in the matter. People v. Leddy (1912) 53 Colo. 109, 111, 123 Pac. 824.

The majority opinion assumes that the public outside of the municipal area involved is not concerned in the construction and operation of a pipe line outside of the municipal area. Is that true? On this theory a private utility serving a home rule city with electric energy could take any hydropower site in the state and construct a plant thereon without any authority from this Commission on the ground that they are only serving the energy generated to the consumers in such a city, although such a power site may be necessary to adequately and economically serve the public more adjacent to the power site. This is only one illustration of why an additional public to that residing in such a municipal area may be interested. In my opinion, the rights granted to a utility to construct in territory other than the municipal area involved is of great concern to the territory in which the construction is made. In the instant case it is sought to construct a pipe line 27 miles long outside of the municipal area. This construction will not only be made over private property, but also over public property. Undoubtedly, the right of eminent domain is claimed if satisfactory arrangements cannot be made to purchase a right of way. Moreover, the public residing along this pipe line

may have a right to be served with natural gas. The record shows that some of the right of way involved over this 27 miles is over public lands and the Federal Government will not grant a right of way for such purposes unless such *pipe line* is constructed, operated, and maintained as a common carrier. (Section 28, Chap. 85 of the Act of Congress of February 25, 1920.) In other words, the applicant cannot operate and maintain a pipe line on a right of way obtained over public lands from the Federal Government unless the same is operated and maintained as a common carrier, which means that any public that may reasonably be served from this pipe line intermediate to and between the Garmesa structure and Grand Junction or/and any company producing natural gas on the Garmesa structure, has a right to be served.

It, of course, will not be denied that the power to authorize a utility to operate as a common carrier in the territory involved resides solely in the state, functioning through this Commission, and until this Commission has authorized the serving of the territory adjoining the pipe line, the applicant has no legal basis on which to obtain a right of way from the Federal Government. The Federal Government, however, has sole jurisdiction under what conditions it will grant rights of way over public lands. Our jurisdiction is exclusive so far as intrastate pipe lines are concerned. Moreover, this becomes important when we call attention to § 2946, Compiled Laws of Colorado, 1921, wherein this Commission is given jurisdiction over the territory served and to be served by private utilities. This section was before our supreme court in Public Utilities Commission v. Loveland (1930) (Colo.) P.U.R. 1931A, 212, 218, 289 Pac. 1090. In construing this section, the supreme court said:

"The very object of the provisions of the statute applicable here was to prevent, *in the interests of the general public,* unnecessary duplication of facilities or systems for furnishing the same to customers. When the city became a public utility under the statute, it had no superior right as to territory outside of its municipal boundaries over the rights of any other public utility, private corporation, or otherwise, authorized to furnish service."

I take it to mean from this language that this Commission has jurisdiction over the territorial rights outside of the city limits of Grand Junction involved in the construction of this pipe line, and until we grant a certificate to construct such a pipe line, no legal authorization exists therefor. For this Commission to now stand aside and permit this construction without our authority would, in my opinion, be a direct violation of the laws which we are required to administer. The record in this case shows that other utilities desire to serve in some of the territory involved herein. No application, however, has been filed by them seeking a certificate of public convenience and necessity to construct or operate. Their testimony is only relevant in this case to show how important it is for this Commission to preserve its power over territorial questions. As long as a competitive situation is possible in the quest for

obtaining natural gas in any given territory, the question as to who should receive that territory is a very vital one, not only to the public residing in a home rule city, but also to the public residing outside of such municipal area and residing along the pipe line construction involved who may desire service. In the event of the distribution by the applicant of natural gas to other consumers than those residing within the municipal area of Grand Junction subsequent to the construction of the pipe line and separation plant, the expenditures now made by the applicant as applied to the rate structure in the determination of reasonable rates, may become of very great importance to such consumers as reside outside of the said municipal area.

In view of the record on the question of financial responsibility and the adequacy of the natural gas, and after a careful consideration of all the facts and circumstances made in the record of this case, I am of the opinion that the public convenience and necessity does not require the construction of a pipe line for the transmission of natural gas and the distribution of this gas in the towns and communities involved. The application should, therefore, be denied.

ALABAMA PUBLIC SERVICE COMMISSION

Alabama Public Service Commission

v.

Rogersville Telephone Company et al.

[Docket No. 5991.]

Service — Duty to serve — Inadequate return.

A telephone utility, upon complaint of a subscriber against the adequacy of its service, was required to rehabilitate its system, notwithstanding the fact that its revenues did not yield a fair return, in view of the authority and willingness of the Commission to afford relief by way of increased rates.

[December 8, 1930.]

COMPLAINT *by a subscriber against the adequacy of telephone service; service ordered to be improved and authority for increased rates granted to take effect upon the completion of such improvements.*

By the COMMISSION: On June 4, 1930, the Commission received a letter from a subscriber of the Rogersville Telephone Company complaining

about the difference in rates when a call was placed from Florence to Rogersville and when a call was placed from Rogersville to Florence.

The Commission promptly took this matter up with L. A. Williams, manager of the Rogersville Telephone Company, who advised the Commission that the rates on toll calls from Rogersville to Athens and Rogersville to Florence had been changed. In the meantime the Commission had received several other complaints from subscribers of this company relative to the toll rates which were being charged and to the service which was being rendered by the company.

The Commission sent its telephone engineer to Rogersville to make a thorough investigation of these matters and his report shows that the property of the Rogersville Telephone Company is in very bad condition and that adequate service cannot be rendered.

Consequently on September 4, 1930, the Commission cited the Rogersville Telephone Company to show cause why after due notice and hearing it should not be required to establish and maintain reasonable rates and service on its system and why it should not discontinue rates and charges for such telephone service which have not been approved by the Commission as required by law.

In answer to this citation the respondent appeared at the hearing in Decatur, Alabama, on September 24, 1930, through its manager, L. A. Williams. Several of the subscribers of this company who had made complaints before the Commission also appeared at said hearing. The testimony taken at the hearing shows among other things, as follows:

(1) The telephone property at Rogersville operated under the name of Rogersville Telephone Company is owned by Mrs. L. A. Williams and managed by L. A. Williams.

(2) The long-distance rates of respondent were increased April 1, 1930, without authority of this Commission as required by law.

(3) Respondent charges a rental of 50 cents per month for business and 25 cents per month for residence telephone instruments which are furnished by it, in addition to the regular monthly exchange charges.

(4) Respondent's manager, L. A. Williams, has not read, and respondent does not operate under, the Commission's general rules applicable to telephone companies.

(5) Respondent's manager, L. A. Williams, was unable to tell from his own knowledge or from the company's records, as to which lines and station instruments the company owns, and which lines and station instruments, the subscriber owns.

(6) Respondent's manager, L. A. Williams, stated that the service was not good and that the company had no plans for improving it.

(7) The Rogersville Telephone Company does not keep its books or records as required by General Order "U-1" of this Commission.

Subsequent to the hearing, the Commission sent its telephone engineer to Rogersville again to make a study of the operations of this system. The engineer's report, which is a part of this record, shows among other things, that the long-distance line between Athens and Rogersville, which

is the only means by which telephone or telegraph service from Rogersville to the outside world can be had, is in such condition that commercial service cannot be rendered due to the following faults:

(1) It is of the grounded type and is constructed of No. 12 iron wire which contains many rusty joints that are in very bad condition.

(2) The insulators on said line, many of which are missing, are small No. 5 porcelain knobs. In many places the line is hung on nails, over knots on the poles, left swinging in the bushes or is on the ground.

(3) Due to deterioration many poles are missing and most of those which are in place are not substantial enough to carry a metallic line. Where the poles are missing the wire is hung on bushes and branches of nearby trees.

(4) The vines and shrubbery along this line apparently have never been trimmed and have grown over the poles and wire so that conversation on the line is interfered with.

The exchange plant in the town of Rogersville is in bad condition due to the following reasons:

(1) A number of the poles are rotted off at the ground which have caused them to fall over and others are suspended in the air by the wires to the next pole.

(2) The wires are very rusty with many poorly made joints.

(3) A number of insulators are missing.

(4) In many places trees have grown through the wires and vines have entangled them.

(5) The station apparatus is poorly maintained with many loose connections and in some cases the batteries are entirely exhausted.

(6) The switchboard is badly in need of repairs as few connections are soldered and the board generally is in very bad condition.

The engineer did not make a detailed report of the condition of the line between Rogersville and Florence as he states that, in his opinion, it will be necessary to construct an entirely new line before reasonably good service can be rendered. Due to the estimated cost of this work, he recommends, therefore, that the present arrangement, whereby the calls from Rogersville to Florence are routed through Athens and then over the lines of the Southern Bell Telephone & Telegraph Company, be continued.

As the record shows, respondent herein is not furnishing the public with reasonable telephone service, due to the methods of operation and plant faults set out above.

In addition to the poor service which is being furnished, respondent has unlawfully raised certain toll rates without securing proper authority from this Commission.

The record shows that a number of subscribers have discontinued their telephones due to the poor service and that others are contemplating doing so. From the reports which are filed with the Commission and the testimony submitted at the hearing, it appears that the respondent is earning a return on the value of its exchange property. Respondent's manager stated that the exchange rates are all right. The Commission's telephone engineer has submitted estimates which are a part of this record of the cost of the improvements which

will be required, of the revenue which will be received, and of respondent's operating expenses after the completion of the rehabilitation and these estimates show that a reasonable return will be earned after the improvements are made if the property is efficiently operated.

While the evidence shows that the toll rates which were in effect were not sufficient to enable respondent to earn a reasonable return on the fair value of its toll property devoted to the service of the public, respondent did not apply to this Commission for the proper relief. The Commission, however, will allow respondent to increase its toll rates to the level of the existing toll rates throughout the state, which will enable it to earn a reasonable return on the value of its toll property, if and when the exchange and toll plant facilities are placed in such condition that reasonably good service can be rendered and the order herein will so provide.

Sufficient information being available to the Commission by the report of its own engineers and the testimony presented at the hearing in Decatur, the Commission finds it necessary and reasonable to make and enter an order, setting out the Commission's requirements with respect to the necessary rehabilitation of the properties of the Rogersville Telephone Company and the improvements necessary by respondent to enable it to render reasonable and adequate service. The Commission finds that ninety days is a reasonable time in which to do the necessary work and the order will provide that the work must be completed within such time.

An appropriate order is herewith issued. [Order omitted.]

PENNSYLVANIA PUBLIC SERVICE COMMISSION

W. E. Schnee

v.

Montgomery Water Company

[Complaint Docket No. 8384.]

Service — Threatened discontinuance — Expense of maintaining water meter.

1. A complaint of a water consumer against the refusal of a water company to render him metered service because he declined to pay for and maintain the meter was sustained, where there did not appear to be any rule in the company's tariff requiring metered customers to bear this expense, p. 391.

Service — Threatened discontinuance — Nonpayment of flat rate by a customer desiring metered service.

2. The complaint of a water consumer, otherwise justified in refusing to

bear the expense of installing and maintaining his own meter, against the threatened discontinuance of service because of nonpayment of arrearages of water rent computed on a flat rate basis was dismissed, in view of his failure to file a complaint against such charges promptly, p. 392.

[December 2, 1930.]

COMPLAINT *by a water consumer against the threatened discontinuance of service; sustained in part, dismissed in part.*

By the COMMISSION: This complaint brings into issue the reasonableness of respondent water company's practice of requiring a consumer desiring metered service to furnish and maintain the meter. It also alleges the threatened discontinuance of service to complainant because of the nonpayment of arrearages of water rent computed on the flat rate basis.

[1] Complainant is a domestic consumer receiving unmetered water service from respondent at his residence in Montgomery, Lycoming county. In April, 1927, he made a request for metered service. Respondent refused to render this service unless complainant provided and maintained the meter, whereupon complainant continued the service as theretofore but paid only what he estimated his rate would be under measured service. At the time of the complaint he was indebted to respondent in the sum of $69.62, being the aggregate flat rate charges and penalties, less the amounts paid by him. When respondent threatened to discontinue service, he filed the present complaint.

An examination of respondent's tariff discloses no rule definitely requiring the consumer to furnish the meter notwithstanding that respondent has uniformly made this a condition precedent to a patron obtaining the benefit of the metered rates. On the other hand, the rules of respondent seem to have been drafted on the assumption that meters shall be owned and maintained by it. This Commission has repeatedly held, and good water-works practice dictates that a water company should furnish and maintain the meters. When a water company assumes to render measured service, its business is to furnish, maintain, and operate every facility required to deliver that service. The meter is a facility which has its part in the service so rendered and should, therefore, be within the ownership and control of the company. The record here indicates no reason why the Commission should depart from what it has hitherto held to be unreasonable, namely, requiring a consumer to furnish and maintain the meter. The fact, as in the present case, that respondent has for many years made a practice of requiring consumers to provide the meters, does not establish that practice as just and reasonable for the present and future. Accordingly, respondent will be directed to discontinue such practice, and upon proper application by complainant or any other patron for metered service and upon due compliance with its tariff regulations, to furnish and maintain the necessary meter.

[2] While the Commission is not a tribunal to adjudicate the liability of complainant for the bill of $69.62 rendered against him by respondent, it does appear that this bill is in accordance with the established tariff for flat rate service, which is the kind of service complainant has received. That his application for meter basis service was improperly refused, does not automatically entitle him to a meter basis of charges. His remedy was to file a complaint at the time of refusal over three years ago. For this reason the Commission is of opinion that respondent has not acted unreasonably in availing itself in this case of its legal means of enforcing payment of the arrearages in question; *Therefore,*

Now, to wit, December 2, 1930, It is *ordered:* That the complaint, to the extent above indicated, be and is hereby sustained.

It is *further ordered:* That Montgomery Water Company, respondent, forthwith cease and desist from requiring applicants for metered service to furnish and maintain the meters.

It is *further ordered:* That Montgomery Water Company, respondent, upon proper application by complainant or any other patron for metered service and upon due compliance with its tariff regulations, furnish and thereafter maintain the meter necessary to such service.

NEW YORK DEPARTMENT OF PUBLIC SERVICE, METROPOLITAN DIVISION (TRANSIT COMMISSION)

Re B. & Q. Service Company, Incorporated

[Case No. 3022.]

Service — Purchase of new equipment — Intercorporate relations.

Although generally opposed to complicated financial transactions resulting from intercorporate relations, the Commission approved of a conditional sales agreement for the purchase of 100 new cars by a subsidiary of a rapid transit company to be leased to the parent company for actual operation, in order to facilitate the acquisition of the new equipment, which would have to be covered by outstanding property mortgages if sold directly to the parent, and where both parent and subsidiary were subject to the jurisdiction of the Commission.

[November 26, 1930.]

APPLICATION *of a subsidiary of a rapid transit company for approval of a conditional sales agreement for the purchase of new equipment; granted in accordance with the opinion herein.*

FULLEN, Chairman: The B. and Q. Service Company, Incorporated, a street railroad corporation as defined in the Public Service Law, has applied to this Commission under § 55 of that law, for authority to issue lease warrants or notes in payment of the purchase of one hundred new street surface cars to be provided under conditional sale agreements, and also for this Commission's consent to the execution and delivery of such agreements.

The B. and Q. Service Company, Incorporated, was formed on January 2, 1930, under Art. 2 of the Stock Corporation Law for many purposes, including the following:

"To purchase, construct, hire, or otherwise acquire rolling stock, cars, motors, appliances, machinery, implements, and equipment necessary, suitable or proper for use in connection with the construction, maintenance, equipment, or operation of street surface or other railroads, and to sell or lease any of the foregoing, or otherwise contract for the use thereof."

The amount of its capital stock is $20,000, consisting of 800 shares, with a par value of $25 a share, all of which were issued to and are held by Brooklyn and Queens Transit Corporation, hereinafter referred to as the Transit Corporation. As the result of the consolidation of five companies, the Transit Corporation operates street surface railroads in the boroughs of Brooklyn and Queens.

The applicant now owns one hundred street surface cars purchased by moneys loaned by the Transit Corporation for which the applicant issued up to September 30, 1930 its 6 per cent car purchase demand notes amounting to $1,616,000. It also borrowed from the Transit Corporation $241,000 with which it acquired certain real estate deemed necessary for some of the objects for which it was formed.

The one hundred cars owned by the applicant are leased to the Transit Corporation at a yearly rental of $1,200 per car, representing carrying charges on the cost of such cars, plus an amount to cover depreciation.

The applicant now proposes to make an agreement with each of two car builders, namely, the J. G. Brill Company and the Osgood-Bradley Car Corporation for the purchase from each, of fifty new single end center-exit surface cars at a cost of $13,000 per car and to pay for those cars by the issuance to each car builder of twenty lease warrants or notes amounting to $828,750, of which $650,000 represents principal and the balance, $178,750, the interest thereon payable as follows:

Ten annual installments of $65,000 beginning April 1, 1932, and ending April 1, 1941, together with semiannual interest at 5 per cent.

Ten annual installments beginning October 1, 1931, and ending October 1, 1940, representing semiannual interest at 5 per cent.

As security for the payment of the notes, the applicant proposes to convey to each car builder ten of the cars now owned by it, which, with the new cars covered by the conditional sale agreements, will be then leased to the applicant until final payment will be made, whereupon title to all the cars will vest in the applicant.

It is expected that all of the cars will have been delivered by April 1, 1931, and immediately upon their delivery are to be leased to the Transit Corporation for a rental which will be lower than the rental now paid for the leasing of the cars now owned by the applicant.

The president of both companies testified at the hearing on the application that, in his opinion, the additional cars are reasonably necessary for the requirements of the applicant; that their operation by the Transit Corporation will enable the latter to improve its service; and that he considers the price of $13,000 per car a very attractive price as compared with a price of about $16,500 paid a year ago for the same kind of cars and with $15,000 to $17,000 paid by the former Brooklyn City Railroad Company for very similar—although double entrance—cars purchased by it between 1924 and 1928. He also said that an additional expenditure of about $500 per car will be necessary to make the cars ready for operation. He explained that no profit is intended to be made as a result of the transaction between the applicant and the Transit Corporation but that an intervening corporation, such as the applicant, is used in order that such property as is purchased and ultimately becomes the property of the applicant will not be covered by the lien of the thirteen mortgages upon the properties of the companies which were consolidated to form the Transit Corporation.

The Commission is not disposed to look with favor upon the intervention of a subsidiary company with the usually resultant complicated financial transactions and intercorporate relations, but where, as in this case, both the subsidiary and parent company are subject to the Commission's jurisdiction and the applicant has shown sufficient to justify the issuance of the lease warrants or notes, the Commission should not withhold its approval. As there appears to be no power vested in the Commission to consent to the proposed conditional sale agreements, the order to be entered herein will be limited to an authorization to issue the notes for the purchase of the new cars, the plans and specifications for which are to be satisfactory to the Commission's chief engineer.

At the hearing certain legal questions arose with respect to the acquisition of applicant's stock by the Transit Corporation and the leasing to the latter of the applicant's cars without the Commission's consent. Those questions, while not immediately necessary for determination under the direct issues here presented, should be made the subject of conferences between representatives of the Commission and the companies with a view to determining the necessity for applications under § 54 of the Public Service Law.

CALIFORNIA RAILROAD COMMISSION

Re Board of Trustees of Leland Stanford Junior University et al.

[Decision No. 23081, Application No. 16927.]

Consolidation — Commission authority — Enforcement of exclusive service contract.

The Commission, in approving an agreement whereby a university transfers gas property to a utility, with a provision that the university will not permit anyone other than that utility to install gas service on its campus, has no authority to make a valuation of certain gas properties already on the campus owned by the municipality, or to require the utility to purchase such properties at a fixed price.

[November 13, 1930.]

APPLICATION *of trustees of a university and of a gas and electric company for an order of the Commission authorizing a certain agreement of sale and purchase between such parties; approved.*

APPEARANCES: C. P. Cutten, for Pacific Gas and Electric Company; Norman E. Malcolm, City Attorney, for City of Palo Alto.

By the COMMISSION: The Railroad Commission is asked to make its order granting and conferring upon Pacific Gas and Electric Company all necessary permission and authority to consummate an agreement dated September 22, 1930, by and between Pacific Gas & Electric Company and the board of trustees of the Leland Stanford Junior University, hereinafter sometimes referred to as Stanford University, looking toward the purchase by the former of certain gas properties of the latter, and authorizing Pacific Gas and Electric Company, upon acquiring said properties, to make effective in the territory served by said properties its filed schedules of rules and regulations governing gas service, and to charge and collect for the gas service to be furnished and supplied the rates and charges set forth in its filed schedule G–2–N (Revised Sheet C. R. C. No. 349–G).

The agreement of September 22, 1930, a copy of which is filed as Exhibit A, refers to the sale by Stanford University to Pacific Gas and Electric Company, for $27,810.76, of a gas distribution system situate on the university campus and consisting of 2-inch and 4-inch mains, together with

service pipes, and rights of way of reasonable width across the campus for the maintenance, operation, repair, and replacement of said gas distribution system and any extension or extensions thereof, including feeder mains. Exhibit No. 1 shows that the properties to be sold include 46,000 feet of wrought standard black pipe and fittings, 31 valves and valve pits, and 230 services.

The agreement contains a provision that in the event the purchase and sale of the property is consummated, the seller promises and agrees that it will not permit any person, firm, or corporation, other than the purchaser, to install, operate, or maintain gas mains on the campus as long as the purchaser uses the gas distribution system referred to for the purpose of delivering gas and gas service to its consumers. In this connection it is reported that the gas properties of Stanford University now being sold to Pacific Gas and Electric Company have been leased to and are being operated by the city of Palo Alto, and that the city, in addition, has installed certain mains, services, meters, and regulators on the campus. At the hearing held in this proceeding, Norman E. Malcolm, city attorney of the city of Palo Alto, filed on behalf of the city, a petition to intervene and an application requesting the Commission to ascertain and determine the value of all the property of the city which forms part of the distribution system proposed to be sold by the agreement.

In its petition for intervention and application, the city alleges that it owns on the university campus approximately 1,400 feet of 4-inch gas main running from Alma street and University avenue to the junction of Quarry road and highway, which main is used exclusively for university service, 610 feet of 2-inch main on Mansfield road and Santa Inez to Dolores, 3,080 feet of 1-inch main on county road to Lathrop residence, 64 one half-inch service connections, with an average length of 21½ feet, two one-inch services, 261 meters with fittings and 214 regulators with fittings. In addition it is alleged that the city has within the last several years replaced certain 2-inch gas main and that since October 1, 1929, it has paid out in excess of $2,000 for the adjusting of gas appliances to the use of natural gas and that as a result of the sale of the properties it will lose a net revenue of about $3,500 per annum. The city contends that it should be reimbursed, not only for the properties which it owns on the university campus, but likewise for the replacement of gas main and the adjustment of gas appliances and that it should be compensated for severance damage and going concern value. The city does not protest the granting of this application, but it does take the position that the Pacific Gas and Electric Company should purchase the city's properties on the university campus and otherwise reimburse it, as indicated. Counsel for applicant stipulated that applicant would be willing to purchase, at a fair valuation, any property of the city which is situated on the university campus and which can be used by it. He was not willing to stipulate that applicant would compensate the city for severance damage or going concern value or for properties which it could not use.

It appears from the record that the city of Palo Alto has been operating the gas distribution system owned by the university under a lease which can be terminated by either party on sixty days' notice and that the university offered to sell the properties which are the subject matter of this application, to the city. The city, it appears, was not satisfied with the price and thereupon the offer was withdrawn with the result that the university entered into an agreement to sell the properties to the Pacific Gas and Electric Company.

We know of no provision of the Public Utilities Act which authorizes the Commission, under the circumstances of this case, to make a valuation of the properties owned by the city of Palo Alto and require applicant to purchase the city's properties at a price fixed by the Commission. Apparently the university has the right to terminate the lease under which the city has been operating the properties. The city in making any expenditures no doubt did so in contemplation that the university might terminate the lease. We believe that the petition for intervention and the application filed by the city of Palo Alto should be denied without prejudice.

In our opinion the application herein should be granted. It appears, however, that some question might exist as to the reasonableness of the purchase price of $27,810.76. Mr. J. T. Ryan, valuation engineer of Pacific Gas and Electric Company, estimates, as of July 1, 1930, the cost to reproduce new the properties to be transferred, at $30,165 and the cost to reproduce new less depreciation at $22,377. He further estimates the historical reproduction cost at about $26,495 and the historical reproduction cost less depreciation at about $22,370. In our opinion, the purchaser in recording the acquisition of these properties on its books of account should charge to its fixed capital accounts the estimated historical cost figures, plus additions and betterments, and should credit to its depreciation reserve account an amount representing depreciation estimated to have accrued on the properties at the date of transfer. Any difference between the purchase price and the estimated historical cost of the properties, less accrued depreciation, should be charged, or credited, to the purchaser's profit and loss account.

The record does not show what rates are now being charged by the city of Palo Alto to consumers being served by the system which is the subject matter of this application. Pacific Gas and Electric Company plans on putting into effect in the territory served its schedule G–2–N, a copy of which is filed as Exhibit B. This schedule provides for the furnishing of natural gas for light, heat, and power service to consumers in other points within the San Jose division in Santa Clara and San Mateo counties, and appears to us to be the proper one under which to supply service to consumers on the university campus.

CALIFORNIA RAILROAD COMMISSION

Re Joe Ferrant

[Decision No. 22720, Application No. 16412.]

Certificates — Evidence of necessity — Service incidental to air transit.
An application of a motor carrier for a certificate to operate a passenger stage service between a city and certain airports was granted in view of the fact that such service was a necessary incident to the development of air transportation, which should be specially encouraged.

[August 2, 1930.]

APPLICATION *of a motor carrier for a certificate of convenience and necessity to operate between a city and certain airports; granted.*

APPEARANCES: O'Melveny, Tuller and Meyers, by William W. Clary and Clinton LaTourrette, for applicant; Kidd, Schell and Delamer, by Herbert W. Kidd, for Motor Transit Company, protestant; Rex W. Boston, for Original Stage Lines, Incorporated, protestant; Frank Karr and R. E. Wedekind, for Pacific Electric Railway Company, protestants; J. Ogden Marsh, for Board of Public Utilities and Transportation of the city of Los Angeles, interested party.

By the COMMISSION: This is an amended application filed by Joe Ferrant in which he requests authority to establish service as a common carrier for the transportation of passengers and their baggage between (a) 636 South Olive street, Los Angeles, California, and Grand Central Air Terminal, located on San Fernando road in the city of Glendale, California; (b) 6407 Hollywood boulevard, Los Angeles, California, and Grand Central Air Terminal; (c) 6770 Hollywood boulevard, Los Angeles, California, and Western Air Express, Alhambra Airport; and (d) 113 West Ninth street, Los Angeles, California, and Western Air Express, Alhambra Airport.

The fares proposed are 75 cents per passenger, each way, between 636 South Olive street and Hollywood and the Glendale Airport; 75 cents between 113 W. Ninth street and the Alhambra Airport, and $1 between Hollywood and the Alhambra Airport.

Time schedules are set forth in Exhibit "B" attached to the original application. Applicant proposes to use in this service one Lincoln limousine, two Cadillac sedans, and one Packard sedan.

Public hearings were held by Examiner Gannon at Los Angeles and the matter was submitted on briefs which were duly filed.

Actively protesting the application were Original Stage Lines, Motor Transit Company, and Pacific Electric Railway Company, all of whom contended that they offered transportation service sufficient and satisfactory to meet the public need.

Applicant proposes to arrange his schedule so that they will correspond with the arrival and departure of airplanes, which of necessity are somewhat irregular. The service is to be limited to passengers of Western Air Express and Transcontinental Air Transport, using either the Glendale or the Alhambra airports, and is not to include any intermediate service. In the event of forced landings at certain designated fields, applicant proposes to keep in touch with airplane officials and meet all airplanes arriving on such schedules. Officials of both Western Air Express and Transcontinental Air Transport testified that the service proposed was essential to the adequate ground transportation of their passengers and that by far the larger percentage of such passengers preferred a specialized service of this type to the ordinary methods of traveling to and from the landing field.

Pacific Electric Railway Company operates an electric car service from the downtown section of Los Angeles to Glendale, making ten stops en route and transferring to busses such passengers as desire to reach the airport. The wait for a bus would be anywhere from twenty to fifty minutes.

Original Stage Lines offer service on their regular schedules, their busses discharging passengers at a point two tenths of a mile from the airport depot at Glendale. They had attempted to make some arrangement with Transcontinental Air Transport involving the carriage of passengers under a guarantee, but such negotiations failed.

Motor Transport Company operates a 10-minute bus service to Alhambra Airport and had offered to render a service on a leased car basis with a guarantee of $30 per day for each car so leased.

It is clear from the testimony herein that airplane passengers prefer not to use regular bus or street car service in traveling between the landing field and their ultimate destination. In fact, L. S. Aldridge, a former driver for applicant, testified that he had made a one-day check of arrivals and departures of Original Stage Line busses at Glendale Airport and Motor Transit busses at Alhambra Airport and that not a single airplane passenger had used such busses.

We do not deem it necessary to make any further reference to the testimony. Suffice it to say that the evidence clearly points to a desire on the part of airplane passengers for a specialized type of public transportation such as applicant offers. Travel by airplane is undertaken as a means of saving time, and the time-saving element necessarily enters into the ground transportation incidental to such travel. We do not believe the service offered by protestants herein is of a type demanded or desired by

airplane passengers, and the record clearly shows that they will not avail themselves of such service when it is offered, even though the fares are substantially lower. Applicant proposes a service which is comfortable, convenient, expeditious, and flexible. Travel by airplane, including ground transportation incidental thereto, is still in a developmental stage and we believe should be encouraged whenever possible, especially when, as here, a service is offered in connection therewith which is superior in every way to that offered by protesting carriers.

Some reference was made at the hearings to the fact that applicant was now operating this service unlawfully, and also some question was raised as to his financial ability. We are satisfied that the applicant is able to finance the operation here proposed. The record shows that he commenced hauling passengers from downtown points to both airports about a month before filing his application and we are satisfied there was no conscious attempt either to evade the law or to operate in violation of the Commission's rules.

Subsequent to the submission of this application the protestants filed a petition for reopening of the case for further hearing, and to afford protestants an opportunity to present additional evidence of alleged illegal operation on the part of applicant. The fullest inquiry was had into this matter at the hearing and we are of the opinion that no good or useful purpose would be served by a reopening of the case. The petition will, therefore, be denied.

The testimony in this proceeding clearly indicates that public convenience and necessity require the service here proposed and the application should be granted.

Joe Ferrant is hereby placed upon notice that "operative rights" do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the state which is not in any respect limited to the number of rights which may be given.

:: PROFESSIONAL DIRECTORY ::

STATEMENT OF OWNERSHIP

Statement of ownership, management, circulation, etc., of Public Utilities Fortnightly, published bi-weekly at Rochester, N. Y., required by the Act of Congress of August 24, 1912.

Name	Postoffice Address
Publisher, Public Utilities Reports, Inc.	Rochester, N. Y.
Editor, Henry C. Spurr	Rochester, N. Y.
Managing Editor and Editorial Director, Kendall Banning	Washington, D. C.
Business Manager, A. S. Hills	Washington, D. C.

Owners: (Names and addresses of individual owners, or if a corporation, its name and names and addresses of stockholders owning or holding 1 per cent or more of the total amount of stock.) Public Utilities Reports, Inc., Rochester, N. Y.; Owen D. Young, New York, N. Y.; Orlando B. Willcox, New York, N. Y.; E. K. Hall, New York, N. Y.; Philip H. Gadsden, Philadelphia, Pa.; Ralph B. Feagin, New York, N. Y.; L. R. Nash, Boston, Mass.; Martin J. Insull, Chicago, Ill.

Known bondholders, mortgagees, and other security holders owning or holding 1 per cent or more of total amuunt of bonds, mortgages, or other securities are: None.

PUBLIC UTILITIES REPORTS, INC.
Henry C. Spurr, Editor

Sworn to and subscribed before me this 26th day of September, 1930.
Ellsworth Nichols.

(My commission expires March 31, 1931.)

INDEX TO ADVERTISERS

Subsidiary and affiliated public utility companies of

STANDARD GAS & ELECTRIC COMPANY

serve 1,588 cities and towns, with combined estimated population of 6,300,000, in twenty states. As of December 31, 1929, customers of all classes were 1,592,188, and total installed electric generating capacity was 1,390,214 kilowatts.

THE SYSTEM INCLUDES:

The California Oregon Power Company
Duquesne Light Company (Pittsburgh)
Equitable Gas Company (Pittsburgh)
Kentucky West Virginia Gas Company
Louisville Gas and Electric Company
Market Street Railway Co. (San Francisco)
Mountain States Power Company
Northern States Power Company
Oklahoma Gas and Electric Company
Philadelphia Company
Pittsburgh Railways Company
San Diego Cons. Gas and Electric Co.
Southern Colorado Power Company
Wisconsin Public Service Corporation
Wisconsin Valley Electric Company
Deep Rock Oil Corporation

BYLLESBY ENGINEERING AND MANAGEMENT CORPORATION

ENGINEERS—MANAGERS

231 South La Salle Street, Chicago, Illinois